Part II begins on page 8693

PART I

FEDERAL REGISTER

VOLUME 24 NUMBER 210

Washington, Tuesday, October 27, 1959

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[C.C.C. Grain Price Support Bulletin 1, 1959 Supp. 2, Amdt. 3, Barley]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1959-Crop Barley Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES; MICHIGAN, NORTH DAKOTA, AND WASHINGTON

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 23 F.R. 9651, 24 F.R. 3027, 4017, 5236 and 7237 and containing the specific requirements for the 1959-Crop Barley Price Support Program are hereby amended as follows:

Section 421.4087(b) is amended by increasing the following basic county support rates:

MICHIGAN

County	Rate per bushel From—	To—
Montcalm	$0.76	$0.77

NORTH DAKOTA

Mercer	$0.68	$0.69
Oliver	.69	.70

WASHINGTON

Clallam	$0.72	$0.78
Cowlitz	.89	.90
Grays Harbor	.83	.84
Island	.88	.89
King	.90	.91
Kitsap	.81	.83
Mason	.81	.84
Pacific	.81	.84
Snohomish	.88	.89
Wahkiakum	.89	.90
Whatcom	.85	.87

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, 15 U.S.C. 714, 7 U.S.C. 1421, 1441)

Issued this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 59-9074; Filed, Oct. 26, 1959; 8:49 a.m.]

This issue includes two parts bound together. Part II contains the proposed revision of regulations relative to milk in the Ohio Valley Marketing Area, 7 CFR Part 1024, issued by the Department of Agriculture, Agricultural Marketing Service.

[C.C.C. Grain Price Support Bulletin 1, 1959 Supp. 2, Amdt. 2, Grain Sorghums]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1959-Crop Grain Sorghums Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES; NEBRASKA

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 23 F.R. 9651, and 24 F.R. 3031, 4125, and 6179 and containing the specific requirements for the 1959-Crop Grain Sorghums Price Support Program are hereby amended as follows:

Section 421.4237(b) is amended by increasing the following basic county support rates:

NEBRASKA

County	Rate per hundredweight From—	To—
Hamilton	$1.42	$1.45
Johnson	1.50	1.52
Lancaster	1.50	1.53
Merrick	1.43	1.47
Nemaha	1.50	1.52
Otoe	1.51	1.52
York	1.44	1.49

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 59-9075; Filed, Oct. 26, 1959; 8:50 a.m.]

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FEDERAL REGISTER

REpublic 7-7500 Extension 3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

[Amdt. 5]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—Provisions for Participation of Financial Institutions in Pools of CCC Price Support Loans on Certain Commodities

RATE OF INTEREST AND BASIS OF COMPUTATION OF INTEREST EARNED

Section 421.3803 of the regulations issued by the Commodity Credit Corporation published in 23 F.R. 3913, as amended, containing the terms and conditions under which financial institutions may participate in pools of CCC price support loans on certain commodities, is hereby amended by deleting paragraph (b) in its entirety and substituting in lieu thereof the following:

§ 421.3803 Rate of interest and basis of computation of interest earned.

* * * * *

(b) *1959 and subsequent crop programs.* Certificates evidencing participation in financing 1959 and subsequent crop price support program loans shall earn interest at the rate of 2¾ percent per annum through and including June 30, 1959, 3¼ percent per annum from July 1, 1959 through and including October 31, 1959, and 4 percent per annum thereafter.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072; 15 U.S.C. 714c)

Issued this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-9077; Filed, Oct. 26, 1959; 8:50 a.m.]

SUBCHAPTER D—REGULATIONS UNDER SOIL BANK ACT

[Amdt. 36]

PART 485—SOIL BANK

Subpart—Conservation Reserve Program for 1956 Through 1959

INCORRECT INFORMATION FURNISHED BY THE GOVERNMENT

The regulations governing the conservation reserve part of the Soil Bank Program, 21 F.R. 6289, as amended, are hereby further amended as follows:

1. The title of the subpart is changed from "Conservation Reserve Program" to "Conservation Reserve Program For 1956 Through 1959."

2. The first sentence of such regulations (21 F.R. 6289) is changed to read as follows: "The regulations in this subpart govern the conservation reserve part of the Soil Bank Program for contracts which include only land for which the first year of the contract period is 1956, 1957, 1958, or 1959."

3. A new section 485.187 is added at the end thereof to read as follows:

§ 485.187 Incorrect information furnished by the Government.

Pursuant to the provisions of Public Law 86-265, 86th Congress, the Administrator, CSS, may, to the extent he deems it desirable in order to provide fair and equitable treatment, authorize the payment of compensation to a producer under the conservation reserve program which he otherwise would not be entitled to receive because the contract, application therefor, action, or conduct of the producer is:

(a) Not in conformity with the provisions of the program, or

(b) Less favorable to the producer than would have been the case if it had been based on correct information, or

(c) Based on an understanding that payment would be forthcoming in an amount in excess of that permitted by the program,

If it is established to the satisfaction of the Administrator, CSS, that the contract, application, action, or conduct of the producer was the result of relying in good faith on the erroneous approval of such contract, application, action, or conduct by, or on the erroneous advice, determination, or computation of an authorized representative of the Secretary.

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Issued at Washington, D.C., this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-9072; Filed, Oct. 26, 1959; 8:49 a.m.]

[Amdt. 2]

PART 485—SOIL BANK

Subpart—Conservation Reserve Program for 1960

INCORRECT INFORMATION FURNISHED BY THE GOVERNMENT

The regulations governing the Conservation Reserve Program for 1960, 24 F.R. 7987, as amended, are hereby further amended by adding a new § 485.541 at the end thereof to read as follows:

§ 485.541 Incorrect information furnished by the Government.

Pursuant to the provisions of Public Law 86-265, 86th Congress, the Administrator may, to the extent he deems it desirable in order to provide fair and equitable treatment, authorize the payment of compensation to a producer under the conservation reserve program which he otherwise would not be entitled to receive because the contract, application therefor, action, or conduct of the producer is:

(a) Not in conformity with the provisions of the program, or

(b) Less favorable to the producer than would have been the case if it had been based on correct information, or

(c) Based on an understanding that payment would be forthcoming in an amount in excess of that permitted by the program, if it is established to the satisfaction of the Administrator that the contract, application, action, or conduct of the producer was the result of relying in good faith on the erroneous approval of such contract, application, action, or conduct by, or on the erroneous advice, determination, or computation of, an authorized representative of the Secretary.

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Issued at Washington, D.C., this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-9071; Filed, Oct. 26, 1959; 8:49 a.m.]

PART 485—SOIL BANK

Subpart—Acreage Reserve Program

The regulations governing the 1956 acreage reserve part of the Soil Bank Program, 21 F.R. 4379, as amended, the 1957 acreage reserve part of the Soil Bank Program, 21 F.R. 10449, as amended, and the 1958 acreage reserve part of the Soil Bank Program, 22 F.R. 6397, as amended, are hereby supplemented as follows:

Pursuant to the provisions of Public Law 86-265, 86th Congress, the Administrator, Commodity Stabilization Service, may, to the extent he deems it desirable in order to provide fair and equitable treatment, authorize the payment of compensation to a producer under the acreage reserve program which he otherwise would not be entitled to receive because the contract, action, or conduct of the producer is:

(1) Not in conformity with the provisions of the program,

(2) Less favorable to the producer than would have been the case if it had been based on correct information, or

(3) Based on an understanding that payment would be forthcoming in an amount in excess of that permitted by the program,

If it is established to the satisfaction of the Administrator, Commodity Stabilization Service, that the contract, action, or conduct of the producer was the result of relying in good faith on the erroneous approval of such contract, action, or conduct by, or on the erroneous advice, determination, or computation of, an authorized representative of the Secretary.

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Issued at Washington, D.C., this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-9073; Filed, Oct. 26, 1959; 8:49 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 957—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Subpart—Rules and Regulations

REVISION

Notice of rule making regarding a proposed revision of the rules and regulations (Subpart—Rules and Regulations, 7 CFR 957.100–957.133) issued pursuant to Marketing Agreement No. 98, as amended, and Order No. 57, as amended, regulating the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, was published in the FEDERAL REGISTER October 2, 1959 (24 F.R. 7962). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to file data, views, or arguments pertaining thereto not later than 15 days after publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice, the said rules and regulations are hereby revised to read as follows:

§ 957.100 Communications.

Unless otherwise provided by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order, both as amended, shall be addressed to the committee at its principal office.

DEFINITIONS

§ 957.110 Order.

"Order" means Order No. 57, as amended, effective September 1, 1958 (7 CFR §§ 957.1–957.91) regulating the handling of Irish potatoes grown in Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south thereof.

§ 957.111 Fiscal period.

"Fiscal period" means the period beginning June 1 of each year and ending May 31 of each succeeding year, both dates inclusive.

§ 957.112 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order, both as amended.

CERTIFICATES OF PRIVILEGE

§ 957.120 General.

Whenever shipments of potatoes for special purposes pursuant to § 957.53 are relieved in whole or in part from grade and size regulations issued under § 957.52 the committee shall require information and evidence as to the manner, methods, and timing of such shipments as safeguards against the entry of any such potatoes into trade channels other than those for which intended. Such information and evidence shall include the requirements set forth below with respect to Certificates of Privilege.

§ 957.121 Qualification.

Before handling potatoes for special purposes which do not meet regulations issued pursuant to § 957.52 a handler must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle potatoes; (b) agree to comply with reporting and other requirements set forth in §§ 957.121 to 957.125, inclusive, with respect to such shipments; and (c) receive approval of the committee, or its duly authorized agents, to so handle potatoes. Such approval will be based upon evidence furnished in his application for a Certificate of Privilege, and other information available to the committee.

§ 957.122 Application.

(a) Application for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and variety of the potatoes to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the potatoes are to be used; a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purpose stated in § 957.120.

(b) The committee may require each handler making shipments of potatoes for export to include with his application a copy of the Department of Commerce Shipper's Export Declaration Form No. 7525–V applicable to such shipment.

§ 957.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period, and specified qualities and quantities of potatoes to be sold or transported to the designated consignee for the purposes declared.

§ 957.124 Reports.

Each handler of potatoes shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee or its duly authorized agents showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 957.125 Disqualification.

The committee from time to time may conduct surveys of handling of potatoes for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a handler or consignee is failing to comply with requirements and regulations applicable to handling of potatoes in special outlets, and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and further certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee but in no event shall it extend beyond the end of the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 21, 1959, to become effective 30 days after publication in the FEDERAL REGISTER.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59–9051; Filed, Oct. 26, 1959; 8:46 a.m.]

PART 984—WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Establishment of Budget of Expenses of Walnut Control Board and Rates of Assessment for Marketing Year Beginning August 1, 1959

Notice was published in the FEDERAL REGISTER of September 30, 1959 (24 F.R. 7877) that the Secretary was considering establishment of a budget of expenses of the Walnut Control Board in the amount of $113,500, and assessment rates of 0.12 cent and 0.18 cent per pound respectively, for merchantable unshelled and shelled walnuts handled in the marketing year beginning August 1, 1959. This action, as proposed and as hereby taken, is in accordance with applicable provisions of Marketing Agreement No. 105, as amended, and Order No. 84, as amended, regulating the handling of walnuts grown in California, Oregon, and Washington (7 CFR Part 984), effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

The aforesaid notice afforded interested persons an opportunity to file data, views, or arguments concerning the proposals. The prescribed time has expired and no such communications have been filed.

After consideration of all relevant matters presented, including the proposals contained in such notice which were recommended by the Walnut Control Board, it is hereby found that the aggregate expenses hereinafter set forth are reasonable and likely to be incurred by the Control Board during the 1959–60 marketing year and that the rates of assessment as fixed hereby should assure adequate funds to defray such expenses for such marketing year.

It is, therefore, ordered, That, the budget of expenses of the Walnut Control Board and rates of assessment for the marketing year beginning August 1, 1959 shall be as follows:

§ 984.311 Budget of expenses of the Walnut Control Board and rates of assessment for the 1959–60 marketing year.

(a) *Budget of expenses.* The budget of expenses of the Walnut Control Board for the marketing year beginning August 1, 1959, shall be in the total amount of $113,500, such amount being reasonable and likely to be incurred for maintenance and functioning of the Board, and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rates of assessment.* The rates of assessment for the said marketing year, payable by each handler to the Walnut Control Board on demand, shall be 0.12 cent per pound of merchantable unshelled walnuts handled or certified for handling, and 0.18 cent per pound of merchantable shelled walnuts handled or declared for handling by him during said marketing year.

It is hereby found that good cause exists for not postponing the effective date of this order later than the date of its publication in the FEDERAL REGISTER for the reasons that: (1) the action is applicable to all merchantable walnuts handled during the current marketing year and such handling has already begun; (2) the authorization of expenses and fixing of the rates of assessment should be effected as soon as possible because funds available for temporary board use pursuant to § 984.66(e) are not sufficient to enable the Walnut Control Board to perform its functions in accordance with the requirements of said amended marketing agreement and order; (3) prior notice of the proposed action was given all interested parties; and (4) compliance herewith will not require any special or advance preparation on the part of handlers.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 22, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 59-9068; Filed, Oct. 26, 1959; 8:48 a.m.]

PART 989—RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

Modification of Minimum Grade and Condition Standards for Natural Condition Golden Seedless Raisins and Minimum Grade Standards for Packed Golden Seedless Raisins

Pursuant to Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of, and data and information supplied by, the Raisin Administrative Committee, and other available information, it is hereby found that to modify, as hereinafter set forth, the minimum grade and condition standards for natural condition Golden Seedless raisins and the minimum grade standards for packed Golden Seedless raisins will tend to effectuate the declared policy of the act.

During September 1959, rains fell on Thompson Seedless grapes some of which are artificially dehydrated to produce Golden Seedless raisins. As a consequence of the rains, damage by mechanical injury to some of the Golden Seedless raisins exceeds the respective limitations provided therefor in the incoming minimum grade and condition standards and outgoing minimum grade standards for such raisins. The modifications in the aforesaid standards, as hereinafter set forth, will lessen the present mechanical injury restrictions applicable to natural condition and packed Golden Seedless raisins and permit the marketing of a quantity of packed Golden Seedless raisins suitable for human consumption which would otherwise be required to be disposed of for non-human food purposes. In this way, this action will reduce the present shortage of such raisins for human consumption.

Therefore, it is hereby ordered, That: (1) With respect to natural condition Golden Seedless raisins of the 1959 production and continuing in effect until September 1, 1960, Item A3 in § 989.97 is, pursuant to the authority contained in § 989.58(b), hereby modified by changing the period at the end thereof to a comma and adding the following: "as modified, insofar as operation under this part is concerned, pursuant to § 989.59(b)."

(2) With respect to packed Golden Seedless raisins of the 1959 production and continuing in effect until September 1, 1960, the requirements of "U.S. Grade C," as defined in the effective United States Standards for Grades of Processed Raisins (§§ 52.1841 to 52.1852 of this title) and as referred to in § 989.59(a)(2) are, pursuant to the authority contained in § 989.59(b), hereby modified, insofar as operation under this part is concerned, by substituting for the five percent damage restriction in § 52.1845(c)(4) and Table I of said standards the following requirements:

Not more than 10 percent, by weight, of raisins may be damaged: *Provided,* That not more than five percent, by weight, may be damaged by other than mechanical injury.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rule-making procedure, and that good cause exists for making the provisions hereof effective upon publication in the FEDERAL REGISTER and not postponing the effective time until 30 days after such publication (5 U.S.C. 1001–1011), in that: (1) This action relieves restrictions on the handling of raisins by making less restrictive the current applicable minimum grade standards for Golden Seedless raisins; (2) this action will aid in reducing the present shortage of such raisins for human consumption by making eligible an additional quantity of raisins which would otherwise not be available for human food purposes; (3) the longer the additional quantity of raisins which this action will permit to be marketed for human consumption are held by dehydrators and handlers, the greater will be the holding expense; (4) handlers are generally aware of this action and that it was unanimously recommended by the committee; and (5) such persons need no additional notice in order to utilize or comply with this action. In these circumstances, the modification should become effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 22, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 59-9066; Filed, Oct. 26, 1959; 8:48 a.m.]

PART 989—RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

NATURAL CONDITION RAISINS

The Raisin Administrative Committee has unanimously recommended an amendment of the administrative rules and regulations (7 CFR 989.101–989.180; 24 F.R. 1981, 6973, 7500, 7722), so as to authorize, in certain circumstances, the fumigation of incoming lots of natural condition raisins during the inspection and certification process. The committee and the rules and regulations are pursuant to, and for operations under,

Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California (hereinafter referred to as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

As one means of assuring wholesomeness and storability of raisins, nearly half of the handlers now fumigate all incoming lots of natural condition raisins within 48 hours after receipt. Fumigation by these handlers occurs soon after the process of incoming inspection and certification is completed. Earlier fumigation as soon as practical after receipt on handler premises would be even more effective in assuring the wholesomeness and storability of raisins. Also, these two factors are important in determining whether natural condition raisins meet the minimum grade and condition standards. Moreover, if fumigation is performed promptly during the inspection and certification process, the completion of such process would not be unduly delayed. Therefore, handlers should be given reasonable opportunity to fumigate any lot of such raisins during such process prior to its being certified as meeting, or not meeting, such standards. To the extent that handlers will take advantage of such opportunity, the wholesomeness and storability of raisins will be improved, the quantity of natural condition raisins which can be initially certified as standard raisins will be increased, and the workload of the handlers, the committee, and the inspection agency will be reduced. Thus, the declared policy of the act will tend to be effectuated.

Therefore, it is hereby ordered, That § 989.158(a) of the administrative rules and regulations (Supart—Administrative Rules and Regulations; 7 CFR 989.101–989.180; 24 F.R. 1981, 6973, 7500, 7722), be, and the same hereby is, amended by adding thereto a new subparagraph (8) as follows:

(8) With respect to any lot of natural condition raisins being received and inspected at a handler's inspection point pursuant to subparagraph (3) of this paragraph, the inspector shall, upon the request of the handler, afford such handler an opportunity to fumigate the lot during the inspection and certification process. Such lot of raisins shall remain under the supervision of the inspector during the fumigation. The inspection certificate shall not be issued until the fumigation is completed: *Provided,* That the inspection certificate shall be issued, whether or not the fumigation is completed, not later than two business days after the date the inspection and certification process is suspended by the inspector to permit fumigation. The certification shall be on the basis of the inspection information and data then available to the inspector and his determinations with respect thereto.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rule-making procedure, and that good cause exists for making the provisions hereof effective upon publication in the FEDERAL REGISTER and not postponing the effective time until 30 days after such publication (5 U.S.C. 1001–1011), in that: (1) This amendatory action affords a handler the opportunity to fumigate incoming lots of raisins sooner than provided by present procedure, it does not impose any new restrictions on the handler, and thus it relieves restrictions; (2) it was unanimously recommended by the committee which includes representative producers, dehydrators and handlers in its membership; (3) handlers generally are aware of this amendatory action and that it was recommended by the committee; and (4) such persons need no additional notice in order to utilize or comply with this amendatory action. In these circumstances, the amendment should become effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 22, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 59–9067; Filed, Oct. 26, 1959; 8:48 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. T]

PART 220—CREDIT BY BROKERS, DEALERS, AND MEMBERS OF NATIONAL SECURITIES EXCHANGES

Correction

Section 220.116, published October 16, 1959 (24 F.R. 8411), duplicates the interpretation contained in § 220.115, published September 17, 1959 (24 F.R. 7496). Therefore, § 220.116 is hereby revoked. Section 220.115 continues in effect.

(Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w)

Dated at Washington, D.C., this 21st day of October 1959.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 59–9048; Filed, Oct. 26, 1959; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59–KC–60]

[Amdt. 41]

PART 608—RESTRICTED AREAS

Revocation

The purpose of this action is to revoke the McHenry, N. Dak., Restricted Area (R–202) (Fargo Chart).

The U.S. Army has stated they no longer have a requirement for Restricted Area R–202. Therefore, this area is unjustified as an assignment of airspace and revocation thereof will be in the public interest.

Since this amendment reduces a burden on the public, compliance with the Notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, the following action is taken:

In § 608.42 the McHenry, N. Dak., Restricted Area (R–202) (Fargo Chart) (23 F.R. 8586, 23 F.R. 9135, 23 F.R. 9773) is revoked.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Secs. 307(a) and 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on October 20, 1959.

JAMES T. PYLE,
Acting Administrator.

OCTOBER 20, 1959.

[F.R. Doc. 59–9045; Filed, Oct. 26, 1959; 8:45 a.m.]

[Reg. Docket No. 156; Amdt. 139]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Part 609 (14 CFR Part 609) is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	300-1	300-1	200-½
				C-dn*	500-1	500-1	500-1½
				S-d-24*	400-1	400-1	400-1
				S-n-24*	400-1	400-1	400-1½
				A-dn	800-2	800-2	800-2

Procedure turn E side of crs, 052° Outbnd, 232° Inbnd, 1600′ within 10 miles. (Nonstandard to avoid obstructions.)
Minimum altitude over facility on final approach crs 1000.′
Crs and distance, facility to airport, 232°—3.2.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.2 miles, make 180° left climbing turn to 1600′ direct to the Bridgeport LFR.

NOTE: ADF approach not authorized.
*CAUTION: Standard clearance not provided over 362° stacks 1½ mi W of range.

City, Bridgeport; State, Conn.; Airport Name, Bridgeport Airport; Elev., 9′; Fac. Class., MRLWZ; Ident., BDR; Procedure No. 1, Amdt. 8; Eff. Date, 7 Nov. 59; Sup. Amdt. No. 7; Dated, 13 Apr. 57

				T-dn	300-1	300-1	300-1
				C-dn	500-1	500-1	500-1½
				S-dn-10	500-1	500-1	500-1
				A-dn	NA	NA	NA

Procedure turn South side of West crs, 279° Outbnd, 099° Inbnd, 1500′ within 10 mi.
Minimum altitude over facility on final approach crs, 800′.
Crs and distance, facility to airport, 098°—3.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.6 miles, make a left climbing turn to 1500′, return to the CTE LFR, hold on the West crs, one minute, right turns.
NOTES: No weather reporting. No tower communications at airport. Contact Salisbury Radio for ATC clearance. Prior approval required from NASA Chincoteague, Va. for landings at this airport.

City, Chincoteague; State, Va.; Airport Name, NASA Chincoteague; Elev., 38′; Fac. Class., MRLWZ; Ident., CTE; Procedure No. 1, Amdt. 2; Eff. Date, 7 Nov 59; Sup. Amdt. No. 1; Dated, 17 Oct. 59

Meridian VOR	MEI-LFR	Direct	1690	T-dn	300-1	300-1	200-½
				C-dn	500-1	500-1	500-1½
				S-dn-18	500-1	500-1	500-1
				A-dn	800-2	800-2	800-2

Procedure turn W side NW crs, 334° Outbnd, 154° Inbnd, 1600′ within 10 miles.
Minimum altitude over facility on final approach crs, 1100′.
Crs and distance, facility to airport, 156°—2.4.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.4 miles, climb to 1700′ on SE crs within 20 miles.
CAUTION: Trees 600′ MSL 2 miles East.
AIR CARRIER NOTE: Takeoffs with less than 200-½ NA Rnwy 4-22.

City, Meridian; State, Miss.; Airport Name, Key Field; Elev., 297′; Fac. Class., SBMRAZ; Ident., MEI; Procedure No. 1, Amdt. 7; Eff. Date, 7 Nov. 59; Sup. Amdt. No. 6; Dated, 26 Jan. 57

2. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
DSM-LFR	LOM	Direct	2400	T-dn*	300-1	300-1	200-½
DSM-VOR	LOM	Direct	2400	C-dn	400-1	500-1	500-1½
Mortensdale FM	LOM	Direct	2400	S-dn-30	400-1	400-1	400-1
Grimes Int	LOM	Direct	2500	A-dn	800-2	800-2	800-2
Ankeny Int	LOM	Direct	2500				
Elkhart Int	LOM	Direct	2500				
Mint Int**	LOM (Final)	Direct	1600				
Beech Int	LOM (Final)	Direct	1600				

Procedure turn E side of crs, 125° Outbnd, 305° Inbnd, 2100′ within 10 mi.
Minimum altitude over facility on final approach crs, 1600′.
Crs and distance, facility to airport, 305°—4.3 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.3 miles, climb to 2600′ on crs 305° from LOM within 20 mi or, when directed by ATC, make climbing left turn to 2600′ on W crs of DSM-LFR within 20 miles.
CAUTION: 1546′ MSL tower 3 mi NNE, 1410′ MSL tower 8 mi N, 1430′ tower 8.7 mi NE and 1250′ tower 13 mi SE of arpt.
MAJOR CHANGES: Deletes transitions from TNU VOR to Swan Int and Swan Int to Mint Int.
*When 1546′ MSL tower 3 mi NNE of airport not visible on N, NW, E, and NE takeoffs, climb to 2100′ prior to turning toward tower.
**Mine Int: SE crs DSM-ILS and R-079 DSM-VOR.

City, Des Moines; State, Iowa; Airport Name, Des Moines; Elev., 957′; Fac. Class., LOM; Ident., DS; Procedure No. 1, Amdt. 3; Eff. Date, 7 Nov. 59; Sup. Amdt. No. 2; Dated, 3 Oct. 59

ADF STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Coronado RBn	LPT RBn	Direct	1500	T-dn	300–1	300–1	#200–½
Oceanside RBn	LPT RBn	Direct	2500	C-dn	800–2	800–2	800–2
Miramar RBn	LPT RBn	Direct	3000	S-dn-9	600–1	600–1	600–1
Jamul RBn	LPT RBn	Direct	4500	A-dn	800–2	800–2	800–2
Sargo Int	LPT RBn (Final)	Direct	700				

Procedure turn South side of crs, 280° Outbnd, 100° Inbnd, 1500′ within 10 mi.
Minimum altitude over facility on final approach crs, 700′.
Crs and distance, facility to airport, 100°—1.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1.5 mi, turn right, climb to 2000′ to Coronado RBn/FM or, when directed by ATC, if visual contact not established over Loma Portal RBn, make left climbing turn, climb to 1500′ on a 280° crs from LPT RBn within 10 mi.
#300–1 required on all runways except Rwy. 27.

City, San Diego; State, Calif.; Airport Name, Lindbergh Field; Elev., 15′; Fac. Class., MH; Ident., LPT; Procedure No. 1, Amdt. 1; Eff. Date, 7 Nov. 59; Sup. Amdt No. Orig.; Dated, 19 Sept. 59

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				A-dn	800–2	800–2	800–2

Procedure turn South side of crs, 261° Outbnd, 081° Inbnd, 1600′ within 10 miles. Beyond 10 miles NA.
Minimum altitude over ALI LFR-Z Marker on final approach crs, 1000′*.
Crs and distance, ALI LFR-Z Marker to Airport, 081°—3.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 miles of ALI VOR, turn right, climb to 1400′ on R-162 within 20 miles of VOR.
*If ALI LFR-Z Marker not identified on Final, descent below 1000′ not authorized.

City, Alice; State, Tex.; Airport Name, Municipal; Elev., 178′; Fac. Class., BVOR; Ident., ALI; Procedure No. 1, Amdt. 1; Eff. Date, 7 Nov. 59; Sup. Amdt. No. Orig.; Dated, 10 Oct. 59

Decoto Int	Fremont FM/HW	Direct	4000	T-dn#	300–1	300–1	300–1
SFO Gap RBn	Fremont FM/HW	Direct	4000	C-d	600–1	600–1	600–1½
Bay Pt. FM	Fremont FM/HW	Direct	6000	C-n	600–2	600–2	600–2
Richmond Int	Fremont FM/HW	Direct	4000	A-dn	800–2	800–2	800–2
OAK LFR	Fremont FM/HW	Direct	4000				
Fremont FM/HW	Mt. Eden Int	300°—6.0	1900				
Mt. Eden Int*	OAK VORTAC (Final)	300°—7.0	600				
OAK VORTAC	Fremont FM/HW	Direct	4000				

Standard procedure turn NA. All maneuvering and descent shall be accomplished in the **Fremont FM/HW L/F holding pattern. Minimum altitude 4000′. Descent to 3500′ authorized to cross Fremont FM/HW on final approach crs inbnd.
Minimum altitude over facility on final approach crs, 600′. After passing VORTAC make a 270° turn to the left to intercept R-112.
Crs and distance, facility to Hayward arpt, 112°—6.0 mi. All operations after passing VORTAC must be visual contact.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished over VORTAC, climb to 2000′ in a one-minute right turn holding pattern on R-300 (120° inbnd, 300° outbnd). All turns west side of crs. If approach is discontinued after passing VORTAC en route to Hayward Airport or if visual contact is lost between VORTAC and Hayward Airport, within 6.0 miles, make immediate 180° right climbing turn to VORTAC and climb to 2000′ in a one-minute right turn holding pattern on R-300 (120° inbnd, 300° outbnd). All turns west of crs.
NOTES: Missed or discontinued approach must not cross OAK VORTAC above 1500′. ADF and VOR or dual VOR equipment required for this procedure. Restricted procedure for California Air National Guard use only.
CAUTION: Terrain above 500′ 2 miles East and above 1000′ 3.5 miles East of airport.
*Mt. Eden Int: Int OAK VORTAC R-120 and 047° brng to Hayward RBn or Int OAK VORTAC R-120 and SFO TVOR R-066.
**Fremont FM/HW or Int OAK VORTAC R-120 and SFO TVOR R-083.
#600–2 required for takeoff on Rnwy 4.

City, Hayward; State, Calif.; Airport Name, Hayward; Elev., 46′; Fac. Class., BVORTAC; Ident., OAK; Procedure No. 1, Amdt. Orig.; Eff. Date, 7 Nov. 59

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Meridian LFR	MEI-VOR	Direct	1600	T-dn C-dn A-dn	300–1 600–1 800–2	300–1 600–1 800–2	200–½ 600–1½ 800–2

Procedure turn S side crs, 309° Outbnd, 129° Inbnd, 1600' within 10 mi. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 1100'.
Crs and distance, facility to airport, 129°—3.2.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.2 mi turn right, climb to 2000' on R-170 within 20 mi.
AIR CARRIER NOTE: Takeoffs with less than 200–½ NA runways 4-22.
CAUTION: Trees 600' MSL 2 miles East of airport.

City, Meridian; State, Miss.; Airport Name, Key Field; Elev., 297'; Fac. Class., BVOR; Ident, MEI; Procedure No. 1, Amdt 2; Eff. Date, 7 Nov. 59; Sup. Amdt. No. 1; Dated, 9 May 59

4. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
OAK LFR	OAK VORTAC	Direct	1200	T-dn	300–1	300–1	#200–½
Fremont FM/HW*	OAK VORTAC	Direct	1900	C-dn	700–1	700–1	700–1½
Richmond Int	OAK VORTAC	Direct	2000	A-dn	800–2	800–2	800–2
SFO Gap RBn	OAK VORTAC	Direct	2500				

Standard procedure turn NA. All maneuvering and descent shall be accomplished in a two-minute left turn holding pattern on R-132 (312° inbnd, 132° outbnd), all turns west side of crs. Minimum altitude 1600'. Further descent to airport minimums authorized when established on final approach crs inbnd.
Facility on airport.
Minimum altitude over facility on final approach crs, 700'.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 miles, climb to 2000' in a one-minute right turn holding pattern on R-300, 120° inbnd, 300° outbnd, all turns west side of crs.
*Minimum altitude day or night, IFR or on top for leaving Fremont FM/HW inbnd is 3500'.
#300-1 required for takeoff on Rwy 33.

City, Oakland; State, Calif.; Airport Name, Met. Oakland Int'l.; Elev., 5'; Fac. Class., H-BVORTAC; Ident., OAK; Procedure No. TerVOR (R-132), Amdt. Orig.; Eff. Date, 7 Nov. 59

5. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Scotland RBn	LOM (Final)	Direct	1000	T-dn*	300–1	300–1	200–½
Radar Terminal Area Transitions:				C-dn	500–1	500–1	500–1½
All directions		Within 25 mi	2500	S-dn-4R*	200–½	200–½	200–1
E of NE-SW crs of LGA-LFR		Within 15 mi	1500	A-dn	600–2	600–2	600–2

Procedure turn South side of crs, 223° Outbnd, 043° Inbnd, 1200' within 10 mi of LOM.
Minimum altitude at Glide Slope int inbnd, 1000'.
Altitude of Glide Slope and distance to approach end of Rnwy at OM, 747'—2.6 mi; at MM, 209°—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 500' on NE crs of ILS, then make a climbing right turn to 1500' and proceed to Lido RBn and hold SW. Contact Idlewild approach control for further instructions.
CAUTION: Circling landing minimums do not provide standard clearance over airport control tower and stack 278' MSL 1.7 mi SSE of airport.
NOTE: *Runway Visual Range 2000' also authorized for takeoff and landing on Rnwy 4R; provided that all components of the ILS, high intensity runway lights, approach lights, condenser-discharge flashers, middle and outer compass locators and all related airborne equipment are in satisfactory operating condition. Descent below 212' MSL shall not be made unless visual contact with the approach lights has been established or the aircraft is clear of clouds.

City, New York; State, N.Y.; Airport Name, International; Elev., 12'; Fac. Class., ILS; Ident., IDL; Procedure No. ILS-4R; Amdt. Orig.; Eff. Date, 7 Nov. 59

6. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
0	360	Within 20 mi Within 15 mi	3000 2000				
				Precision approach			
				T-dn	300-1	300-1	200-½
				C-dn	600-1	600-1	600-1½
				S-d-2	300-¾	300-¾	300-¾
				S-n-2	400-1	400-1	400-1
				S-d-20	400-¾	400-¾	400-¾
				S-n-20	400-1½	400-1½	400-1½
				A-dn	800-2	800-2	800-2
				Surveillance approach			
				S-dn-14	600-1	600-1	600-1

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished:
Runway 2: Turn left, climb to 1600' on SW crs CSG LFR within 20 miles.
Runway 20: Climb to 1600' on SW crs CSG LFR within 20 miles.
Runway 14: Immediately turn right, climb to 1600' on SW crs OSG LFR within 20 miles.
CAUTION: Tower 1049' MSL 8 miles North. Jump towers 580' MSL 1½ miles NE, R-129 E and SE of Lawson AAF.
NOTE: Military authority required; airport not available to the general public.

City, Columbus; State, Ga.; Airport Name, Lawson AAF; Elev., 232'; Fac. Class., Lawson AAF; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 7 Nov. 59.

These procedures shall become effective on the dates indicated on the procedures.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on October 19, 1959.

WILLIAM B. DAVIS,
Director, Bureau of Flight Standards.

[F.R. Doc. 59-8934; Filed, Oct. 26, 1959; 11:14 a.m.]

[Reg. Docket No. 158; Amdt. 140]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Part 609 (14 CFR Part 609) is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	

PROCEDURE CANCELLED, EFFECTIVE 19 NOVEMBER 1959, OR ON DECOMMISSIONING OF FACILITY:

City, Dothan; State, Ala.; Airport Name, Dothan; Elev., 330'; Fac. Class., SBRAZ; Ident., DHN; Procedure No. 1, Amdt. 4; Eff. Date, 1 Jan. 55; Sup. Amdt. No. 3; Dated 1 Aug. 50

2. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Lufkin, RBN	LFK-VOR	Direct	1600	T-dn	300-1	300-1	
				C-dn	400-1	500-1	
				S-dn-33	400-1	400-1	
				A-dn	800-2	800-2	

Procedure turn E side of crs, 149° Outbnd, 329° Inbnd, 1300' within 10 miles.
Minimum altitude over facility on final approach crs, 800'.
Crs and distance, facility to airport, 329°—4.3.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.3 miles, turn left, climb to 1700' on R-310 within 10 mi.
NOTE: Radio Tower 558' MSL 3 mi ENE of airport. 548' Radio Tower 3 mi SW of airport 3 mi W final approach crs. 731' radio tower 4.5 mi NE of airport.

City, Lufkin; State, Tex.; Airport Name, Angelin County; Elev., 290'; Fac. Class., BVOR; Ident., LFK; Procedure No. 1, Amdt. 3; Eff. Date, 14 Nov. 59; Sup. Amdt. No. 2; Dated, 1 Jan. 55

				T-dn	300-1	300-1	200-½
				C-dn	400-1	500-1	500-1½
				S-dn-22	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn North side of crs, 061° Outbnd, 241° Inbnd, 2200' within 10 mi.
Minimum altitude over facility on final approach crs, 1800'.
Crs and distance, facility to airport, 241°—2.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.9 miles of VIH VOR, make left turn, climb to 2200' direct to VIH VOR.
NOTE: Runway 4-22 only runway with lights.

City, Rolla; State, Mo.; Airport Name, Rolla National; Elev., 1148'; Fac. Class, BVOR; Ident., VIH; Procedure No. 1, Amdt. Orig.; Eff. Date, 14 Nov. 59

3. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Flat Rock VOR	RIC VOR	Direct	2000	T-dn	300-1	300-1	200-½
Chester FM	RIC VOR	Direct	1500	C-dn	700-1	700-1	700-1½
Manakin RBn	RIC VOR	Direct	2000	S-dn-15	700-1	700-1	700-1
Biltmore Int*	RIC VOR (Final)	Direct	**2000	A-dn	800-2	800-2	800-2

Procedure turn North side of crs, 338° Outbnd, 158° Inbnd, 1400' within 10 miles.
Minimum altitude over facility on final approach crs, 867'.
Crs and distance, breakoff point to approach end of runway, 154°—0.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, climb to 1500' on R-158 RIC VOR within 10 miles.
*Biltmore Int: R-070 Flat Rock and R-338 Richmond.
**Do not descend below 2000' until after passing Biltmore Int.

City, Richmond; State, Va.; Airport Name, Byrd Field; Elev., 167'; Fac. Class., VOR; Ident., RIC; Procedure No. TerVOR-15, Amdt. 1; Eff. Date, 14 Nov. 59; Sup. Amdt. No. Orig.; Dated, 8 Aug. 59

Flat Rock VOR	RIC VOR	Direct	2000	T-dn	300-1	300-1	200-½
Hopewell VOR	RIC VOR	Direct	1500	C-dn	600-1	600-1	600-1½
Chester FM	RIC VOR	Direct	1500	S-dn-33	600-1	600-1	600-1
Manakin RBn	RIC VOR	Direct	2000	A-dn	800-2	800-2	800-2

Procedure turn North side of crs, 144° Outbnd, 324° Inbnd, 1400' within 10 mi.
Minimum altitude over facility on final approach crs, 767'.
Crs and distance, breakoff point to approach end of facility, 334°—0.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile of RIC VOR, make a right climbing turn to 1500' on R-360 of RIC VOR or, when directed by ATC, make a right climbing turn to 1500' on N crs of RIC LFR within 10 miles.

City, Richmond; State, Va; Airport Name, Byrd Field; Elev., 167'; Fac. Class., VOR; Ident., RIC; Procedure No. TerVOR-33, Amdt. 1; Eff. Date, 14 Nov. 59; Sup. Amdt. No. Orig.; Dated, 8 Aug. 59

4. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Meridian LFR	MDA HW	Direct	2000	T-dn	300-1	300-1	200-½
Meridian VOR	MDA HW	Direct	1600	C-dn	500-1	600-1	600-1¼
				S-dn-36#	300-¾	300-¾	300-¾
				A-dn	600-2	600-2	600-2

Procedure turn E side S crs, 184° Outbnd, 004° Inbnd, 1700′ within 10 mi.
Minimum altitude at glide slope interception inbnd 1700′.
Altitude of G.S. and distance to appr end of rny at OM 1700—4.5, at MM 506—0.6.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 1600′ on crs 004° from MDA HW within 20 miles, or turn left and return to MDA HW at 1700′.
NOTE: Take-offs with less than 200-½ N.A. on runways 4 and 22. No approach lights. Over-run lights and high intensity runway lights only on runway 18-36. Runway 9-27 closed.
CAUTION: Trees 600 MSL 2 mi. East of airport.
#500-1 required when glide slope not used.

City, Meridian; State, Miss.; Airport Name, Key Field; Elev., 297′; Fac. Class., ILS; Ident., I-MEI; Procedure No. ILS-36, Amdt. 4; Eff. Date, 14 Nov. 59; Sup. Amdt. No. 3; Dated, 17 Oct. 59

These procedures shall become effective on the dates indicated on the procedures.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on October 19, 1959.

WILLIAM B. DAVIS,
Director, Bureau of Flight Standards.

[F.R. Doc. 59-8935; Filed, Oct. 26, 1959; 11:14 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER B—CLAIMS AND ACCOUNTS

PART 536—CLAIMS AGAINST THE UNITED STATES

General Provisions

Sections 536.1 through 536.8 are revoked and the following substituted therefor:

Sec.
536.1 Purpose and scope.
536.2 Information and assistance.
536.3 Definitions and explanations.
536.4 Responsibilities of the Judge Advocate General and judge advocates.
536.5 Treaties and international agreements.
536.6 Claims.
536.7 Determination of compensation for damage to or loss or destruction of property.
536.8 Determination of compensation for personal injury or death.
536.9 Effect on award of other payments to claimant.
536.10 Adjudication and notice to claimant.
536.11 Appeals.
536.11a Effect of payment.
536.11b Small claims.

AUTHORITY: §§ 536.1 to 536.11b issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.
SOURCE: AR 25-20, October 1, 1959.

§ 536.1 Purpose and scope.

(a) *Purpose.* The regulations of §§ 536.1 to 536.11b govern the administrative processes leading to the settlement of claims against and in favor of the United States and its instrumentalities. They are intended to insure that incidents which may result in claims are promptly and efficiently investigated under supervision adequate to insure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled.

(b) *Scope*—(1) *Applicability.* The regulations of §§ 536.1 to 536.11b apply to incidents that may give rise to claims under §§ 536.12 to 536.23, 536.30, 536.26, 536.27, and 552.16a of this chapter, so far as consistent with those regulations. The applicable investigative procedures specified in §§ 536.1 to 536.11b will be employed for all claims unless other laws or regulations specify other procedures.

(2) *Disaster claims.* When a disaster is occasioned by activities of the Army, other than combat, creating claims appropriate for settlement under §§ 536.12 to 536.23 and 536.29, such claims will be investigated and settled in accordance with standing operating procedures promulgated for that purpose by the commanding general of an army or comparable command responsible for the area of the disaster.

(3) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by §§ 536.1 to 536.11b. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(4) *Nonapplicability.* Sections 536.1 to 536.11b do not apply to:

(i) Contract claims governed by AR 37-103 (Army regulations pertaining to finance and accounting for installations) or other applicable regulations, including procurement regulations.

(ii) Maritime claims (§§ 536.44 and 536.45).

§ 536.2 Information and assistance.

(a) Government personnel are forbidden to represent any claimant or to receive any gratuity for services. They may not accept any interest in a claim or assist in its presentation (62 Stat. 697, as amended, 18 U.S.C. 283). They are prohibited from disclosing information which may be made the basis of a claim, or any evidence of record in any claim matter, except as prescribed in §§ 518.1 to 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim will be instructed generally as to procedure. He will be furnished forms, as prescribed in appropriate regulations and, when necessary, assisted in preparing the form and assembling evidence. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present clams, the procedure to be followed, and the names and locations of claims officers, engineer repair teams, etc. When the government of a foreign country in which the United States Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the

United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The following terms, as used in §§ 536.1 to 536.11b and the regulations referred to in § 536.1(b) will have the meanings here indicated:

(a) *Approving authority.* Any officer designated by the Secretary of the Army, and any commission appointed by the Secretary of the Army or his designee to approve, or, in some instances, disapprove claims against the United States in accordance with applicable regulations.

(b) *Civilian employees.* Includes:

(1) Civilian employees of the Army, prisoners of war and interned enemy aliens engaged in labor for pay, volunteer workers, others serving as employees of the Army without compensation, and as to § 536.26, civilian employees of the Department of Defense who are not employees of the Department of the Army, the Navy, or the Air Force; and

(2) As to claims under § 536.27, employees of the Department of Defense, Department of the Army, or of the Army who were being paid from appropriated funds at the time of the incident which resulted in damage or loss.

(c) *Claim.* Normally, a written demand for the payment of a specified sum of money, other than for ordinary obligations incurred for services, supplies, or equipment.

(d) *Small claim.* A claim which may be settled for $100 or less.

(e) *Claimant.* An individual, partnership, association, corporation, country, State, territory, or other political subdivision of such country, State, or territory, presenting a claim. The term does not include the United States Government or any of its instrumentalities, except as prescribed by statute.

(f) *Claims officer.* A commissioned officer or qualified civilian legally trained or experienced in the conduct of investigations and the processing of claims designated as the officer in immediate charge of claims activities within a command.

(g) *Claim file.* The claim, report of claims officer, or other report of investigation, supporting papers, and pertinent correspondence.

(h) *Combat activities.* Activities resulting from action by the enemy, or by United States Armed Forces engaged in combat, or in immediate preparation for impending combat.

(i) *Disaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(j) *The Government.* The Government of the United States.

(k) *Investigator.* A commissioned officer, warrant officer, enlisted man, or civilian, designated to conduct the investigation.

(l) *Military personnel.* Armed Forces or their individual members.

(m) *Negligence.* Failure to exercise the degree of care required or prescribed by law, or that which an ordinary prudent person would use under the same or similar circumstances.

(n) *Noncombat activities.* Authorized activities which have little parallel in civilian pursuits or which historically have been considered as furnishing a proper basis for the payment of claims, such as maneuvers, special field exercises, practice firing of heavy guns or other weapons, practice bombings, operation of aircraft, use of barrage balloons, escape of animals, use of instrumentalities having latent mechanical defects, movement of combat or other vehicles designed especially for military use, and use and occupancy of real estate.

(o) *Owner.* The person vested with ownership, custody, or title of property, and includes bailee, lessee, mortgagor, and conditional vendee, but does not include mortgagee, conditional vendor, nor another having title for purposes of security only.

(p) *Proximate cause.* An act or omission which in natural and continuous unbroken sequence produced the result and without which that result would not have occurred. An act or omission except for which an incident would not have occurred, but which cannot be said to have caused it, will not sustain liability or (if committed by the claimant) justify denial of the claim. Proximate cause will normally be determined in accordance with local law.

(q) *Settle.* Consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(r) *Scope of employment.* Expressly or impliedly directed or authorized by competent authority, or within the design, aim, purpose, or instructions of the unit's or organization's mission, or in the interest of the Government. Determination of scope of employment under the Federal Tort Claims Act is governed by local law.

(s) *Subrogation.* Substitution by operation of law of one person for another as owner of a right; for example, an insurer (subrogee) who, by paying a claim under a policy, succeeds to the rights of the insured (subrogor).

§ 536.4 Responsibilities of the Judge Advocate General and judge advocates.

(a) The Judge Advocate General is responsible for training, staff supervision, and inspection, as to all claims matters affecting the Department of the Army and the Army.

(b) The senior judge advocate of a command:

(1) Is responsible within the command to which he is assigned for:

(i) Supervision and administration of claims activities;

(ii) Training of claims personnel and the continuing inspection of their activities; and

(iii) Implementation of pertinent claims policies.

(2) Will insure a commissioned officer or qualified civilian experienced in the conduct of investigations and the processing of claims is designated as claims officer.

(c) Direct communication with respect to claims activities between all claims echelons is authorized.

§ 536.5 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.6 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent, legal representative, or survivors, or by a subrogee, as authorized in the regulations applicable to the type of claim involved.

(2) A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which claim is made. With respect to claims cognizable under the provisions of the Federal Tort Claims Act, see § 536.29(f)(1)(iii).

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing his title or capacity. Evidence of the authority of such person to act will not be required except when the laws of the State or country of claimant's residence, or the exigencies of the situation, require such evidence. An agent or legal representative may be required to submit the DA Form 1627 (Notice of Appearance Before a Command or Agency of the Army Establishment), prescribed by 18 U.S.C. 284 and § 583.1 of this chapter.

(b) *Subrogation.* (1) Subrogated claims are not cognizable under §§ 536.26 and 536.27.

(2) The claims of a subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute the basis of a single claim, and thus the total of such claims may not exceed the monetary jurisdiction of the approving authority. If either of the combined claims exceeds, or is expected to exceed settlement limits, neither claim will be certified for payment, but the claim file will be forwarded to the next higher approving authority. Care will be exercised to avoid the splitting of subrogated claims through improper certification for payment.

(3) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Joint claims must be asserted in the names of and signed by the parties in interest, and the approved payment will be by joint check sent to the subrogee. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(4) Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

Care will be exercised to require insurance disclosures consistent with the type of incident generating the claim.

(5) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support his claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or the amount of damages. Approving authorities will make independent adjudications upon the evidence of record and the law.

(c) *Transfer and assignments.* Except as they occur by operation of law (i.e., court order, insurer subrogation, etc.), every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional, and every power of attorney, or other purported authority to receive payment of all or part of any such claim, are null and void (R.S. 3477, as amended by the Acts of 9 October 1940, 54 Stat. 1029, and of 15 May 1951, 65 Stat. 41; 31 U.S.C. 203), unless made after a voucher for the payment has been issued, or unless within the exceptions set forth in the acts cited in this paragraph.

(d) *Action by claimant.*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable.

(2) *Signatures.* The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attaché of the United States Armed Forces.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. Only the original of such substantiating evidence need be submitted. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

§ 536.7 Determination of compensation for damage to or loss or destruction of property.

(a) *Damaged property.* The allowable compensation is the cost of repairs, and normally may not exceed the difference between the value of the property immediately before the incident and the value afterward. However, even when the cost of repairs exceeds the value of the property immediately before the incident, evidence may be furnished justifying allowance of such cost of repairs under special circumstances. Allowance may be made for depreciation resulting from the incident.

(b) *Lost or destroyed property.* The allowable compensation is the value of the property immediately before the incident, less the value of salvage, if any.

(c) *Special damages.* (1) In case of property used for business, agricultural, or residential purposes, compensation may be allowed for reasonable expense incurred for necessary substitute property during the period fairly required to effect repairs.

(2) In the case of registered or insured mail, compensation may include postal fees and postage paid.

(3) The reasonable cost of obtaining required supporting evidence is allowable as an element of compensation. However, allowance may not be made for interest, attorney's fees, inconvenience, or the like.

(d) *Examples*—(1) *Annual crops.* The allowable compensation is based on the number of acres or other unit measure, the average yield per acre in the neighborhood, the degree of maturity of the crop, and the future price at the date of the incident if the crop is traded on commodity exchanges. If the crop is not traded on a commodity exchange, the allowable compensation may be based on the price obtained or expected to be obtained, for similar crops in the neighborhood, reduced by the anticipated cost of cultivation from the date of the incident to maturity, harvesting, and marketing.

(2) *Perennial crops or pasture land.* The allowable compensation is ordinarily the value of the land with the growing crop less its value after the destruction of the crop.

(3) *Timberland.* Generally, the allowable compensation is the difference between the value of the land and the stand before the incident and the value afterwards. However, local law and custom relating to measure of damages will normally be applied.

(4) *Turf and soil.* The allowable compensation is generally the cost of reconditioning the soil to its former state, unless the damage is of a permanent nature, in which case the allowable compensation is the difference between the value of the land before the incident and the value afterward.

(5) *Animals.* Generally, the allowable compensation is the market value of the animal at the time and place of the incident. Special compensation may be appropriate in cases of loss or damage suffered in commercial operations involving fur-bearing animals, animals maintained for breeding purposes, and fowl.

(e) *Proof of damage.* The cost of repairs may be established by a receipted bill or estimate signed by or for a reputable dealer or repairman. Value may be established by a written appraisal of a disinterested, competent, licensed dealer or broker, by market quotations, by commercial catalogs, or by other evidence of the price at which the property can be obtained in the community. Estimates of recognized local authorities such as tax appraisers, highway commission officials, insurance officials, or local agricultural organizations or agents may be considered. The assistance of such persons in determining amount should be sought to the extent practicable. Although only one estimate or appraisal is ordinarily necessary, the claimant may be required to submit other evidence, including an estimate or appraisal from another source, or the claims officer may obtain such information. The claims officer or other qualified investigator will examine damaged property to determine physical damage sustained and condition at the time of the incident, whenever practicable.

§ 536.8 Determination of compensation for personal injury or death.

(a) *General.* Allowable compensation includes reasonable medical, hospital, and burial expenses necessarily incurred.

(b) *Special damages.* The allowable compensation for personal injury or death may include compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(c) *Proof of damage.* The allowable compensation may be established as to:

(1) Medical, hospital, or burial expenses, by itemized bills.

(2) Loss of time and earnings, by a written statement of claimant's employer stating claimant's age, occupation, wage or salary, time lost from work as a result of the incident, whether the person injured was a full-time employee, and his actual period of employment by dates. If the claimant is self-employed, written statements or other evidence showing the amount of earnings actually lost may be considered. A written statement by the attending physician should set forth the nature and extent of the injury and the treatment, the duration and extent of the disability involved, the prognosis, including diminution of earning capacity; and the period of hospitalization and anticipated future medical expenses. Where personal injury is involved, the claimant may, with his consent, be examined at a military medical installation to provide independent medical evidence against which to evaluate the statement of the claimant's physician.

(3) Loss of services by a statement of the cost necessarily incurred to replace

the services to which the claimant is entitled in accordance with the law of the place where the incident occurred.

(4) Physical disfigurement and pain and suffering by a physician's statement indicating the extent and duration of either. A determination of compensation due on this basis will be supported by a written statement of the precedents and law in effect in the place where the incident occurred.

§ 536.9 Effect on award of other payments to claimant.

The total award to which the claimant (and his subrogees) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment the claimant has received from the following sources:

(1) The United States employee who caused the incident;

(2) The United States employee's insurer;

(3) Any person or agency in a surety relationship with the United States employee; or

(4) Any joint tort-feasor or his insurer.

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on the total damages shall be apportioned as their separate interests shall appear (see §§ 536.6(b) and 536.15(d)). Payments made by an insurer for losses cognizable under § 536.27 will be deducted from the total award otherwise allowable to the claimant. See § 536.27(c)(5)(ii).

§ 536.10 Adjudication and notice to claimant.

(a) *General.* When an approving authority has determined that a claim within his monetary jurisdiction is meritorious, he may approve the claim in full or in part, subject to acceptance by the claimant of the reduced amount.

(b) *Award of full amount claimed.* When the claim is approved in full, he will certify the claim for payment to the appropriate disbursing officer, forwarding with the claim the inclosures. He will notify the claimant of the action taken on the claim.

(c) *Award in less than full amount.* When the claim is determined meritorious in part, he will:

(1) Notify the claimant in writing of his action;

(2) Request the execution of a claims settlement agreement (in triplicate), in final and complete settlement of the claim in the reduced amount; and

(3) Advise the claimant that in the event he does not desire to accept the award, he should indicate in his reply his reasons for its rejection.

(d) *Nonacceptance of reduced award.* (1) When a claimant rejects an offer of a reduced amount or fails to reply thereto within 30 days, the approving authority may reconsider the matter and, if justified, make further effort to settle the claim; however, when further effort to settle appears unwarranted, he will forward the file to the next higher approving authority with a seven-paragraph memorandum of opinion and advise claimant of such reference.

(2) Nonacceptance of a proposed settlement within 30 days shall constitute a rejection. Rejection by a claimant of an offer of settlement renders the offer void.

(e) *Claims recommended for disapproval.* When a claim is recommended for disapproval in its entirety, the approving authority will forward the claim to the next higher approving authority, with a seven-paragraph memorandum of opinion. Claimant will not be advised of the nature of the recommendation.

§ 536.11 Appeals.

(a) If a claim is determined to be not meritorious or if an officer of settlement is not accepted by a claimant, the claim file will be forwarded automatically for consideration by the next higher approving authority. No notice of a right to appeal is required and none will be issued except by the Claims Division, Office of The Judge Advocate General.

(b) Where, as to a claim under §§ 536.12 to 536.23, or 536.29, an approving authority assigned to the Claims Division, OTJAG, notifies the claimant that his claim has been found not meritorious, or makes an offer of settlement for less than the amount claimed, the claimant will be informed that:

(1) He may appeal to the Secretary of the Army;

(2) No form for the appeal is prescribed;

(3) The grounds for the appeal should be set forth;

(4) The appeal must be submitted within 30 days of the receipt of the notice of the right to appeal; and

(5) The appeal should be addressed to the Chief of the Claims Division, OTJAG.

§ 536.11a Effect of payment.

Acceptance of an award by the claimant constitutes for the United States as well as the military personnel, or civilian employee, whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.11b Small claims.

(a) *Purpose.* This section provides an expeditious procedure for the investigation and payment of claims which may be settled for $100 or less. If at any time it appears that the claim cannot be approved, it will be fully investigated and processed.

(b) *Investigation.* The investigation will be made in the manner which will develop most expeditiously the facts necessary to determine whether the claim is meritorious and in what amount. The evidence required may be obtained by telephone, from incident reports, and other forms of hearsay evidence. Written statements of witnesses, written estimates of repairs, and the like, are not required. The evidence required to substantiate the claim must establish that:

(1) The United States is liable for the damage or injury incurred;

(2) The claimant is a proper claimant; and

(3) The amount approved, as claimed or agreed, is reasonably substantiated.

(c) *Assistance to claimants.* When a person desires to file a small claim, the investigator may assist the claimant in preparing the claim form based upon information furnished by the claimant and will obtain the claimant's signature on the claim form (SF 95 or DA Form 1089).

(d) *Settlement agreement.* When a claimant is available and agrees to accept a sum less than originally claimed, he will be requested to sign in ink, a statement to that effect on any open space on each copy of the claim form (SF 95 or DA Form 1089). If not readily available, the claimant will be requested to sign and return in triplicate a Claims Settlement Agreement (DA Form 1666), which upon receipt will be attached to the claim form.

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-9042; Filed, Oct. 26, 1959; 8:45 a.m.]

Chapter VII—Department of the Air Force

SUBCHAPTER B—AIRCRAFT

PART 823—PROVIDING WEATHER SERVICE TO NONMILITARY AGENCIES OR INDIVIDUALS

PART 824—UNIDENTIFIED FLYING OBJECTS (UFO)

Miscellaneous Amendments

1. In Part 823, § 823.4, the reference is amended to read: §§ 823.1 to 823.4.

2. A new Part 824 is added as follows:

Sec.
824.1 Purpose.
824.2 Scope.
824.3 Definitions.
824.4 Objectives.
824.5 Reporting.

AUTHORITY: §§ 824.1 to 824.5 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

SOURCE: AFR 200-2, September 14, 1959.

§ 824.1 Purpose.

Sections 824.1 to 824.5 establish the responsibility and procedure for reporting information and evidence on unidentified flying objects (UFO) and for releasing pertinent information to the general public.

§ 824.2 Scope.

The Air Force investigation and analysis of UFO's over the United States are directly related to its responsibility for the defense of the United States. Because prompt reporting and rapid identification are necessary to carry out the second of the four phases of air defense—detection, identification, interception, and destruction, the Air Force

maintains the Unidentified Flying Object Program.

§ 824.3 Definitions.

To insure proper and uniform usage in UFO screenings, investigations, and reportings, the objects are defined as follows:

(a) *Familiar or known objects.* Aircraft, birds, balloons, kites, searchlights, and astronomical bodies (meteors, planets, stars).

(b) *Unidentified aircraft.* (1) Flying objects determined to be aircraft. These generally appear as a result of ADIZ (air defense identification zone) violations and often prompt the UFO reports submitted by the general public. They are readily identifiable as, or known to be, aircraft, but their type, purpose, origin, and destination are unknown. Air Defense Command is responsible for reports of "unknown" aircraft and they should not be reported as UFO's under §§ 824.1 to 824.5.

(2) Aircraft flares, jet exhausts, condensation trails, blinking or steady lights observed at night, lights circling or near airports and airways, and other similar phenomena known to be emanating from, or to be indications of aircraft. These should not be reported under §§ 824.1 to 824.5 as they do not fall within the definition of a UFO.

(3) Pilotless aircraft and missiles.

(c) *Unidentified flying objects.* Any airborne object which, by performance, aerodynamic characteristics, or unusual features, does not conform to known aircraft or missiles, or which does not correspond to definitions in paragraphs (a) and (b) of this section.

§ 824.4 Objectives.

Air Force interest in UFO's is threefold: First, as a possible threat to the security of the United States and its forces; second, to determine the technical or scientific characteristics of any such UFO's; third, to explain or identify all UFO sightings as defined in § 824.3 (c).

(a) *Air defense.* The great majority of flying objects reported have been found to be conventional, familiar things of no great threat to the security of the United States and its possessions. However, since the possibility cannot be ignored that UFO's reported may be hostile or new foreign air vehicles of unconventional design, it is imperative that sightings be reported rapidy, factually, and as completely as possible.

(b) *Technical and scientific.* The Air Force will continue to collect and analyze reports of UFO's until all can be scientifically or technically explained or until such time as it is determined that the full potential of a sighting has been exploited. In performance of this task the following factors should be kept in mind:

(1) To measure scientific advances, the Air Force must have the latest experimental and developmental information on new or unique air vehicles or weapons.

(2) The possibility exists that foreign air vehicles of revolutionary configuration or propulsion may be developed.

(3) There is a need for further scientific knowledge in such fields as geophysics, astronomy, and the upper atmosphere which the study and analysis of UFO's and similar aerial phenomena may provide.

(4) The reporting of all pertinent factors will have a direct bearing on scientific analyses and conclusions of UFO sightings.

(c) *Reduction of percentage of UFO "unidentifieds."* Air Force activities must reduce the percentage of unidentifieds to the minimum. Analysis thus far has provided explanation for all but a few of the sightings reported. These unexplained sightings are carried statistically as unidentifieds. If more immediate, detailed objective data on the unknowns had been available, probably these too could have been explained. However, due to the human factors involved, and the fact that analyses of UFO sightings are based primarily on the personal impressions and interpretations of the observers, rather than on accurate scientific data or facts obtained under controlled conditions, it is improbable that all of the unidentifieds can be eliminated.

§ 824.5 Reporting.

Base commanders will report all information and evidence of UFO sightings, including information and evidence received from other services, Government agencies, and civilian sources.

[SEAL] CHARLES M. MCDERMOTT,
Colonel, U.S. Air Force, Deputy Director of Administrative Services.

[F.R. Doc. 59-9041; Filed, Oct. 26, 1959; 8:45 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 968]

[Docket No. AO-173-A11]

MILK IN WICHITA, KANS., MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Wichita, Kansas, on October 6, 1959 pursuant to notice thereof issued on September 24, 1959 (24 F.R. 7876).

One of the material issues on the record of the hearing related to:

1. A request for suspension of a portion of the supply-demand adjustment (§ 968.51(a)(3)(ii)) of the Wichita, Kansas milk marketing order.

2. The need for emergency action by the Secretary with respect to Issue No. 1.

No briefs were filed by interested parties on the above issue during the time allowed for such filing of briefs.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Request for suspension of portion of supply-demand adjustment.* Evidence presented at the hearing indicated that the supply-demand adjustment since its inception, has resulted in the following adjustments to the Class I price:

	Cents
May 1959	0
June 1959	—4
July 1959	—10
August 1959	—19
September 1959	—19
October 1959	—21

Because of the abrupt action of the adjustment from June 1959 to August 1959 a suspension order effective September 1, 1959 was issued to reduce somewhat the rapidity of the price decline.

The present request to further suspend § 968.51(a)(3)(ii) should be denied in view of the currently available supplies of milk and the now appropriate level of the Class I price in relation to these supplies. Official notice is hereby taken of the computation of uniform prices for the month of September 1959, which was released October 10, 1959 by the Market Administrator of the Wichita, Kansas marketing area. Data contained therein indicate a utilization percentage of 142 during the month of September 1959. Combining this with the utilization data for prior months, results in a minus 20 cents supply-demand adjustment for November 1959. This compares with a minus 21 cents for October 1959.

In view then of the available milk supplies and the slight improvement in the November supply-demand adjustment, it does not appear that such acute conditions exist as to require emergency suspension before the issuance of the recommended decision with respect to all the material issues of the record, including the complete revision of the supply-demand adjustment.

Accordingly, it is hereby determined that the request to suspend under emergency conditions § 968.51(a)(3)(ii) of the order regulating the marketing of milk in the Wichita, Kansas marketing area be denied.

2. *Emergency action.* In view of the above denial of the proposal for suspension action, no emergency action is indicated.

Issued at Washington, D.C., this 22d day of October 1959.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 59-9069; Filed, Oct. 26, 1959; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Establishment of Zero Tolerances for Heptachlor and Heptachlor Epoxide

On the basis of evidence presented at the 1950 spray-residue hearings, a tolerance of 0.1 part per million was established for heptachlor on potatoes by an order published in the FEDERAL REGISTER of March 11, 1955 (20 F.R. 1473). On the basis of evidence presented in petitions submitted by Velsicol Chemical Corporation, 330 East Grand Avenue, Chicago, Illinois, tolerances of 0.1 part per million were subsequently established for 33 additional raw agricultural commodities, including fruit, vegetables, grain, and forage crops. Evidence in these petitions purported to show that residues of heptachlor from the proposed uses would not exceed 0.1 part per million of heptachlor, and that such residues on these commodities would constitute no hazard to health.

A study published in the scientific literature, "The Conversion of Heptachlor to Its Epoxide on Plants," by Norman Gannon and G. C. Decker, Journal of Economic Entomology, volume 51, pages 3–7, showed that residues of heptachlor on forage crops convert in large measure through weathering to heptachlor epoxide. Work done in the laboratories of the U.S. Department of Agriculture and others verified this finding. Investigations of the Food and Drug Administration, the U.S. Department of Agriculture, and others have shown that heptachlor epoxide when fed to cows is deposited in their milk and meat. Additional residue studies reflecting the recommended spray schedules have shown that combined residues of heptachlor and heptachlor epoxide on crops are likely to exceed 0.1 part per million. Although chronic toxicity studies have not been completed on heptachlor epoxide, it has been shown in acute toxicity studies that heptachlor epoxide is more toxic than heptachlor. Evidence is not available to show that such residues would be safe.

Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 408(b), (e), 68 Stat. 514; 21 U.S.C. 346a (b), (e)), and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR, 1958 Supp., 120.29 (a)), it is proposed by the Commissioner, on his own initiative:

1. That in § 120.101 (e) (61) (21 CFR, 1958 Supp., 120.101), the item "Heptachlor ..... 0.1 p.p.m." be revoked; and

2. That § 120.104 (21 CFR, 1958 Supp. 120.104) be revoked and a new § 120.104, reading as follows, be promulgated.

§ 120.104 Tolerances for residues of heptachlor and heptachlor epoxide.

A tolerance of zero is established for combined residues of heptachlor (1,4,5,6,7,8,8 - heptachloro-3a,4,7,7a-tetrahydro-4,7-methanoindene) and heptachlor epoxide (1,4,5,6,7,8,8-heptachloro-2,3-epoxy - 2,3,3a,4,7,7a - hexahydro - 4,7 - methanoindene) in or on each of the following raw agricultural commodities: Alfalfa, apples, barley, beets (including sugar beets), blackeyed peas, brussels sprouts, cabbage, carrots, cauliflower, cherries, clover, corn, cotton, cowpeas, grain sorghum (milo), grapes, grass (pasture and range), kohlrabi, oats, onions, peaches, peanuts, peas, pineapple, potatoes, radishes, rutabagas (yellow turnips without tops), rye, sugarcane, sweet clover, sweetpotatoes, tomatoes, turnips (including tops), wheat.

A person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing heptachlor or heptachlor epoxide may request within 30 days from publication of this notice that the proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Any interested person is invited at any time prior to the thirtieth day from the date of publication of this notice in the FEDERAL REGISTER to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written comments on the proposal. Comments may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Dated: October 19, 1959.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 59-9049; Filed, Oct. 26, 1959; 8:46 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket 161]

AIRWORTHINESS DIRECTIVES

Fairchild Aircraft

Pursuant to the authority delegated to me by the Administrator, (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring corrective action involving Fairchild F–27 aircraft.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination by interested persons in the Docket Section when the prescribed time for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) by adding the following airworthiness directive:

FAIRCHILD. Applies to all Model F–27, F–27A, and F–27B aircraft.

Compliance required by December 30, 1959.

Cases of "rudder walk" have been experienced on aircraft in service. Such rudder oscillation creates a flight hazard. In order to correct or prevent this condition, unless already accomplished, a beaded angle must be added to the rudder balance tab trailing edge in accordance with Fairchild Service Bulletin 27–14.

Issued in Washington, D.C., on October 21, 1959.

WILLIAM B. DAVIS,
Director, Bureau of Flight Standards.

[F.R. Doc. 59-9043; Filed, Oct. 26, 1959; 8:45 a.m.]

[14 CFR Part 514]

[Reg. Docket No. 162]

TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES

Oxygen Masks; Continuous Flow Systems

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196) notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 514 of the Regulations of the Administrator by adopting a new Technical Standard Order. This Technical Standard Order will establish minimum performance standards for oxygen masks for use with continuous flow oxygen systems on civil aircraft of the United States engaged in air carrier operations.

The proposed standards have been coordinated within the aircraft industry

and interested persons now may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination by interested persons in the Docket Section when the prescribed time for return of comments has expired. This proposal will not be given further publication as a draft release.

This amendment is proposed under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421).

In consideration of the foregoing it is proposed to amend Part 514 as follows:

By adding the following § 514.69:

§ 514.69 Oxygen masks for use with continuous flow oxygen systems—TSO-C64.

(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for oxygen masks for use with continuous flow oxygen systems on civil aircraft of the United States engaged in air carrier operations. Masks manufactured on or after the effective date of this section shall meet the standards set forth in FAA standard "Oxygen Masks for Use With Continuous Flow Oxygen Systems" dated September 1, 1959.[1] Masks approved by the Administrator prior to the effective date of this section may continue to be manufactured under the provisions of their original approval.

(b) *Marking.* In lieu of the marking requirements specified by § 514.3, the marking instructions contained in FAA standard "Oxygen Masks for Use With Continuous Flow Oxygen Systems" dated September 1, 1959, shall be acceptable to identify the oxygen mask as meeting the requirements of this section.

(c) *Data requirements.* One copy each of the following shall be furnished by the manufacturer to the Chief, Engineering and Manufacturing Division, Federal Aviation Agency, Washington 25, D.C., with the statement of conformance:

(1) Mask assembly drawing which includes part numbers, materials, and construction details.

(2) Manufacturer's recommended operation and installation instructions.

(3) Appropriate performance test data.

Issued in Washington, D.C., on October 21, 1959.

WILLIAM B. DAVIS,
Director,
Bureau of Flight Standards.

[F.R. Doc. 59-9044; Filed, Oct. 26, 1959; 8:45 a.m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[82039]

FLORIDA

Order Providing for Opening of Public Land

OCTOBER 21, 1959.

The land described herein will become subject to the operation of/and disposition under the existing appropriate public land laws, effective 10:00 a.m. on November 23, 1959.

TALLAHASSEE MERIDIAN, CITRUS COUNTY, FLORIDA

T. 19 S., R. 20 E.,
Sec. 4, Lot 9, (an island situated in Lake Tsala Apopka, containing 12.87 acres)

The Plat of Survey of the land, which was accepted February 2, 1959, has been officially filed in the Eastern States Land Office, Bureau of Land Management, Department of the Interior, Washington 25, D.C.

Based upon the examination of the land by the surveyor, a determination of its character indicates, that it is of sandy loam formation and reaches approximately five feet above water level. The timber on the island consists of live oak, sweet gum, and cabbage palm, ranging from (4) four to (36) thirty-six inches in diameter. The undergrowth is palmetto with a rim of myrtle around the island. There were no improvements on the island at the date of survey in the year 1958. The island is reported as upland in character.

No application may be allowed for the island under the homestead or small tract or any of the other non-mineral public land laws, unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application. Any such application that is filed will be considered on its merit. The land will not be subject to occupancy or disposition until it has been classified.

Applications and selections under the non-mineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

1. Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of such claims or rights. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

2. All valid applications and selections under the non-mineral public land laws, other than those coming under paragraph (1) above, and applications and offers under the mineral leasing laws, presented prior to 10:00 a.m., November 23, 1959, will be considered filed simultaneously at that hour. Rights under such applications and selections filed after that hour and date will be governed by the time of filing.

All inquiries relating to the lands should be addressed to the Manager, Eastern States Land Office, Bureau of Land Management, Department of the Interior, Washington 25, D.C.

H. K. SCHOLL,
Manager.

[F.R. Doc. 59-9050; Filed, Oct. 26, 1959; 8:46 a.m.]

[1] Copies may be obtained from the Chief, Airframe and Equipment Branch, FS-120, Engineering and Manufacturing Division, Federal Aviation Agency, Washington 25, D.C.

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service and Commodity Credit Corporation

1959 AGREEMENT TO MAKE LOAN ADVANCES TO COTTON COOPERATIVE MARKETING ASSOCIATIONS

Increase in Interest Rate

Pursuant to section I, paragraph 2 of the 1959 Agreement to Make Loan Advances to Cotton Cooperative Marketing Associations, Commodity Credit Corporation announces that certificates of interest issued pursuant to such agreement shall earn interest at the rate of 3¼ percent per annum through October 31, 1959 and thereafter shall earn interest at the rate of 4 percent per annum.

Issued this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-9076; Filed, Oct. 26, 1959; 8:50 a.m.]

LENDING AGENCY AGREEMENT, COTTON

Increase in Interest Rate

Commodity Credit Corporation, by Federal Register notice published in 24 F.R. 5314, announced that the per annum

rate of interest included in the compensation provided in Lending Agency Agreement—Cotton (CCC Cotton Form D) in effect for the 1959 and subsequent Cotton Loan Programs would be 2¾ percent through and including June 30, 1959 and 3¼ percent thereafter.

Pursuant to section IV, paragraph 4, of the Lending Agency Agreement—Cotton (CCC Cotton Form D) CCC hereby announces that such per annum rate of interest for 1959 and subsequent Cotton Loan Programs is increased to 4 percent effective on and after November 1, 1959 and that the rates of interest, specified in paragraphs 1b and 3 of such section IV, in effect for 1959 and subsequent Cotton Loan Programs shall be 2¾ percent through and including June 30, 1959, 3¼ percent from July 1, 1959 through and including October 31, 1959 and 4 percent thereafter.

Issued this 21st day of October 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-9078; Filed, Oct. 26, 1959; 8:50 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Foreign Commerce

[File 23-577]

PORN AND DUNWOODY LTD.

Order Denying Export Privileges for an Indefinite Period

In the matter of Porn & Dunwoody Ltd., Union Works, Bear Gardens, London, S.E. 1, England, Respondent; File 23-577.

There is pending an investigation concerning what may be unauthorized diversions of two shipments of diesel engine parts and one shipment of roller bearings, exported from the United States. The Director of the Investigation Staff, Bureau of Foreign Commerce, has applied for an order denying to Porn & Dunwoody Ltd. all export privileges for an indefinite period because of its failure and refusal to respond to written interrogatories duly served on it. The application was made pursuant to § 382.15 of the Export Regulations (15 CFR, Chapter III, Subchapter B) and, in accordance with the practice thereunder, was referred to the Compliance Commissioner of the Bureau of Foreign Commerce who, after considering evidence in support thereof, has recommended that it be granted.

The evidence submitted in support of the application shows that the parts and bearings were exported from the United States for delivery to Porn & Dunwoody Ltd. in England but were not so delivered. Relevant and material interrogatories concerning the participation of Porn & Dunwoody Ltd. in said exportations, the interests which other persons or firms might have had therein, and the persons and places of ultimate delivery thereof were duly served on the respondent, but it has failed and omitted to answer the same and has failed to give any satisfactory or reasonable explanation for its failure so to do. Such failure and omission to answer the interrogatories has impaired and impeded the investigation by the Bureau of Foreign Commerce into the ultimate disposition of said parts and bearings and the ascertainment of the persons involved therein.

Having concluded that this order is reasonable and necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949, as amended: *It is hereby ordered:*

I. All outstanding validated export licenses in which the respondent appears or participates as purchaser, intermediate or ultimate consignee, or otherwise, are hereby revoked and shall be returned forthwith to the Bureau of Foreign Commerce for cancellation;

II. The respondent, its successors or assigns, associates, directors, representatives, agents, and employees, are hereby denied all privileges of participating directly or indirectly in any manner, form, or capacity in any past, present, or future exportation of any commodity or technical data from the United States to any foreign destination, including Canada. Without limitation of the generality of the foregoing, participation in an exportation shall include and prohibit said respondent's and such other persons' and firms' participation (a) as parties or as representatives of a party to any validated export license application; (b) in the using of any export control document; (c) in the receiving, ordering, buying, selling, using, or disposing in any foreign country of any commodities in whole or in part exported from the United States; and (d) in the financing, forwarding, transporting, or other servicing of exports from the United States;

III. This denial of export privileges shall apply not only to the respondent, but also, to the extent necessary to prevent evasion, to any person, firm, corporation, or business organization with which it now or hereafter may be related by ownership, control, position of responsibility, or other connection in the conduct of trade involving exports from the United States or services connected therewith;

IV. This order shall remain in effect until the respondent satisfactorily answers or furnishes written information or documents in response to the interrogatories heretofore served on it or gives adequate reason for its failure or refusal to respond, except insofar as it may be amended or modified hereafter in accordance with the Export Regulations;

V. Without prior disclosure of the facts to and specific authorization from the Bureau of Foreign Commerce, no person, firm, corporation, or other business organization, within the United States or elsewhere (whether or not engaged in trade relating to exports from the United States), shall directly or indirectly in any manner, form, or capacity (a) apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation of commodities from the United States, or (b) order, receive, buy, sell, deliver, use, dispose of, finance, transport, forward, or otherwise service or participate in an exportation from the United States, or in a re-exportation of any commodity exported from the United States, on behalf of or in any association with the respondent or any person acting on its behalf; nor shall any person do any of the foregoing acts with respect to any exportation as to which the respondent may have any interest or obtain any benefit of any kind or nature, direct or indirect.

VI. In accordance with the provisions of § 382.11(c) of the Export Regulations, the respondent may move, at any time prior to the cancellation or termination hereof, to vacate or modify this indefinite denial order by filing an appropriate application therefor, supported by evidence, with the Compliance Commissioner, and it may request oral hearing thereon, which, if requested, will be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

Dated: October 14, 1959.

JOHN C. BORTON,
Director,
Office of Export Supply.

[F.R. Doc. 59-9053; Filed, Oct. 26, 1959; 8:47 a.m.]

Maritime Administration

[Docket No. S-100]

MOORE-McCORMACK LINES, INC.

Notice of Application and of Hearing

Notice is hereby given of the application of Moore-McCormack Lines, Inc., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the "SS Mormacpine," which is under time charter to States Marine Lines to be subchartered by States Marine Lines to Luckenbach Steamship Company, Inc., for an intercoastal voyage in Luckenbach's intercoastal service with general cargo, commencing San Francisco Bay Area on or about November 14, 1959 for discharge at United States North Atlantic ports. Vessel to be redelivered by sub-charterer at East Coast port about mid-December. This application may be inspected by interested parties in the Office of Government Aid, Maritime Administration.

A hearing on the application has been set before the Maritime Administrator for November 10, 1959, at 10:00 a.m., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on November 9, 1959, notify the Secretary, Maritime Administration in writing, in triplicate and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Ad-

ministration, petitions for leave to intervene received after the close of business on November 9, 1959, will not be granted in this proceeding.

Dated: October 21, 1959.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 59-9057; Filed, Oct. 26, 1959; 8:47 a.m.]

Office of the Secretary

DAVID A. WINGATE

Appeals Board Decision

In the matter of David A. Wingate, 68 Wall Street, New York, New York, Appeals Board Docket No. FC-51; B.F.C. Case No. 259.

This is an appeal by David A. Wingate from an Order revoking export licenses and denying export privileges issued on April 28, 1959, herein called the order, by John C. Borton, Director, Office of Export Supply, Bureau of Foreign Commerce, herein called the Bureau (24 F.R. 3515, 5-1-59). Since the appellant has waived oral hearing, this appeal is considered on the record.

Appellant's notice of appeal was filed by letter dated May 8, 1959. By request of the appellant, the Board held this appeal in abeyance until June 19, 1959, when the appellant notified the Board that a request for modification of the order had been denied by the Bureau. The appellant and the Bureau then submitted successive statements and supplemental statements as the case unfolded, received by the Board as follows: from the appellant, July 17, 1959; from the appellant, July 28, 1959; from the Bureau, August 6, 1959; from the appellant, August 28, 1959; from the appellant, October 1, 1959; and from the Bureau, October 5, 1959.

The Board has given careful consideration to the record in this case, together with the arguments made by the appellant and the Bureau. The Board concludes:

1. Under applicable law and Bureau regulations, the violations admitted by the appellant warranted an order denying export privileges.

2. In determining the length of suspension to be imposed, the Bureau gave certain factors weight adverse to the appellant when, on the basis of this record and the circumstances of this case, these factors should not have been given such weight, for example: (a) A comparison drawn between the appellant and a violator in another case apparently based only on the latter's submission to a consent decree; and (b) an inference drawn from the appellant's absence from the hearing before the Compliance Commissioner.

In view of the foregoing, the order is hereby affirmed as to the first six months (ending October 28, 1959) of the one year for which the appellant's export privileges were denied, but amended to eliminate the second six months of this one year (ending April 28, 1960) which were imposed under conditions that constituted a probationary period.

GRISWOLD FORBES,
Chairman,
Appeals Board.

OCTOBER 20, 1959.

[F.R. Doc. 59-9054; Filed, Oct. 26, 1959; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-140]

GENERAL DYNAMICS CORP.

Notice of Issuance of Utilization Facility Export License

Please take notice that no request for a formal hearing having been filed following filing of a notice of proposed action with the Office of the Federal Register, the Atomic Energy Commission has issued License No. XR-32 to General Dynamics Corporation authorizing export of a nuclear reactor to the Office of Atomic Energy of the Republic of Viet Nam. The notice of proposed issuance of this license, published in the FEDERAL REGISTER on July 28, 1959, described the reactor as a 100 kilowatt TRIGA Mark II nuclear reactor.

Dated at Germantown, Md., this 20th day of October 1959.

For the Atomic Energy Commission.

R. L. KIRK,
Acting Director,
Division of Licensing and Regulation.

[F.R. Doc. 59-9040; Filed, Oct. 26, 1959; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8748]

AMERICAN SHIPPERS ENFORCEMENT PROCEEDING

Notice of Postponement of Hearing

Pursuant to the joint motion of the compliance attorney and attorney for the respondent, the hearing in this proceeding is postponed to November 3, 1959, at 10 a.m., in room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Hearing Examiner Ralph L. Wiser.

Dated at Washington, D.C., October 22, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59-9063; Filed, Oct. 26, 1959; 8:48 a.m.]

[Docket No. 10936]

REAL S.A. TRANSPORTES AEREOS

Notice of Prehearing Conference

In the matter of the application of Real S.A. Transportes Aereos for a foreign air carrier permit for service between a terminal point in Brazil, the intermediate points Bogota, Colombia, Mexico City, Mexico, Los Angeles, California, Honolulu, Hawaii, and the terminau point, Tokyo, Japan.

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on October 29, 1959, at 10:00 a.m., e.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Barron Fredericks.

Dated at Washington, D.C., October 22, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59-9064; Filed, Oct. 26, 1959; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13062; FCC 59M-1390]

CHE BROADCASTING CO. (NSL)

Order Continuing Hearing

In re application of CHE Broadcasting Company (NSL), Albuquerque, New Mexico, Docket No. 13062, File No. BP-11842; for construction permit.

On the request of applicant CHE in an undated letter received October 20, 1959, for a postponement of the hearing now scheduled for October 30, 1959, and without objection by the Broadcast Bureau: *It is ordered,* This 20th day of October 1959, that the hearing is continued to Friday, November 13, 1959, at 10 a.m., in the offices of the Commission, Washington, D.C.

Released: October 21, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-9059; Filed, Oct. 26, 1959; 8:48 a.m.]

[Docket No. 13200; FCC 59M-1393]

OKLAHOMA QUALITY BROADCASTING CO. (KSWO-TV)

Order Scheduling Prehearing Conference

In re application of Oklahoma Quality Broadcasting Company (KSWO-TV), a co-partnership composed of R. H. Drewry, J. R. Montgomery, Ted R. Warkentin and Edith H. Scott, executrix of the estate of Robert P. Scott, deceased, Lawton, Oklahoma, Docket No. 13200, File No. BPCT-2637; for construction permit to change existing facilities.

The Hearing Examiner having under consideration the desirability of establishing a date for a prehearing conference;

It appearing that on October 16, 1959, the conference was continued indefinitely from the date of October 23, 1959;

It is ordered, This 21st day of October 1959, on the Examiner's own motion, that

a prehearing conference will be held on October 29, 1959, at 3:00 p.m.

Released: October 22, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-9060; Filed, Oct. 26, 1959; 8:48 a.m.]

[Docket No. 12813; FCC 59M-1389]

SOUTHBAY BROADCASTERS

Order Continuing Hearing

In re application of Burr Stalnaker, John B. Stodelle and Melva G. Chernoff, d/b as Southbay Broadcasters, Chula Vista, California, Docket No. 12813, File No. BP-11469; for construction permit for a new standard broadcast station.

The Hearing Examiner having under consideration the petition for change of procedural dates filed in the above-entitled proceeding on October 15, 1959 by KFWB Broadcasting Corporation;

It appearing that all parties to the proceeding have consented to immediate consideration and grant of the said petition and that good cause for a grant thereof has been shown;

It is ordered, This 20th day of October 1959 that the said petition is granted, the date for the exchange of exhibits by respondent is continued to November 23, 1959 and the date for notification of witness for cross-examination is continued to November 28, 1959;

It is further ordered, That the hearing presently scheduled for November 10, 1959 is continued to December 7, 1959, commencing at 10:00 a.m., in the offices of the Commission at Washington, D.C.

Released: October 21, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-9061; Filed, Oct. 26, 1959; 8:48 a.m.]

[Docket Nos. 12991, 12992; FCC 59M-1394]

SUBURBAN BROADCASTING CO., INC., AND CAMDEN BROADCASTING CO.

Order Continuing Hearing Conference

In re applications of Suburban Broadcasting Company, Inc., Mount Kisco, New York, Docket No. 12991, File No. BPH-2620; Donald Jerome Lewis, tr/as Camden Broadcasting Co., Newark, New Jersey, Docket No. 12992, File No. BPH-2624; for construction permits for new FM broadcast stations.

By agreement of the parties: *It is ordered,* This 21st day of October, 1959, that the prehearing conference in the above-entitled matter presently scheduled for October 26, 1959, be, and the same is, hereby continued to November 12, 1959.

Released: October 22, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-9062; Filed, Oct. 26, 1959; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2269]

NORTH FORK STANISLAUS RIVER HYDROELECTRIC DEVELOPMENT, CALAVERAS COUNTY WATER DISTRICT

Notice of Land Withdrawal; California

OCTOBER 21, 1959.

Conformable to the provisions of section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands herein described insofar as title thereto remains in the United States are included in Power Project No. 2269, for which completed application for preliminary permit was filed August 5, 1959, by the Calaveras County Water District of San Andreas, California. Under said section 24, these lands are from said date of filing reserved from all forms of disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 3 N., R. 14 E.,
Sec. 1: Lot 9.
T. 4 N., R. 14 E.,
Sec. 36: S½NE¼, SE¼.
T. 3 N., R. 15 E.,
Sec. 6: Lots 5, 6, 7, 8.
T. 4 N., R. 15 E.,
Sec. 2: NW¼NE¼, N½NW¼;
Sec. 3: N½NE¼, SW¼NE¼, SE¼NW¼, SW¼;
Sec. 4: SE¼SE¼;
Sec. 9: NE¼, E½SW¼, NW¼SE¼;
Sec. 16: NW¼NW¼;
Sec. 17: S½NE¼, S½SW¼, NW¼SE¼;
Sec. 19: NE¼SE¼;
Sec. 30: NE¼NW¼;
Sec. 31: SW¼SW¼.
T. 5 N., R. 15 E.,
Sec. 34: SE¼SE¼;
Sec. 35: E½NW¼, SW¼.
T. 6 N., R. 16 E.,
Sec. 1: SE¼SW¼, S½SE¼;
Sec. 11: E½NE¼;
Sec. 12: NW¼NE¼; N½NW¼, SW¼NW¼, N½NE¼;
Sec. 15: SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 21: NE¼NE¼, S½NE¼;
Sec. 22: NW¼NW¼;
Sec. 29: SE¼NE¼, SE¼SW¼, W½SE¼.
T. 6 N., R. 17 E.,
Sec. 2: N½NW¼;
Sec. 3: N½, N½S½, SW¼SW¼;
Sec. 4: N½, E½SE¼;
Sec. 5: N½;
Sec. 6: NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, NW¼SE¼.
T. 7 N., R. 17 E.,
Sec. 34: SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 35: SW¼, W½SE¼.
T. 6 N., R. 18 E.,
Sec. 1: N½NW¼, SW¼NW¼;
Sec. 2: N½, N½SW¼, NW¼SE¼;
Sec. 3: All.
T. 7 N., R. 18 E.,
Sec. 34: SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 35: SE¼NE¼, S½SW¼, SE¼;
Sec. 36: SE¼NE¼, S½NW¼, S½.
T. 7 N., R. 19 E.,
Sec. 29: E½NE¼, SW¼NE¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 30: SE¼SE¼;
Sec. 31: NE¼, E½NW¼, SW¼NW¼, NW¼SW¼;
Sec. 32: NW¼NW¼.

Also certain lands of the United States, of variable widths, lying adjacent to the Ebbetts Pass Highway (Forest Highway No. 35) acquired by Forest Exchange Sacramento 035953 pursuant to the Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), by warranty deed of July 11, 1944, from the Calaveras Land and Timber Corporation. This exchange involved portions of sections 1, 11, 12, and 14, T. 5 N., R. 15 E., and of sections 10, 11, 15, 28, 29, 31, and 32, T. 6 N., R. 15 E., which are within the project boundaries of Project No. 2269. A description of these lands may be found in the warranty deed of July 11, 1944, recorded on July 17, 1944, in Book 30, page 198, et seq., of the official records of Calaveras County, California, or Interior Department decision of April 26, 1944, entitled "Decision, Calaveras Land and Timber Corporation, Stanislaus National Forest, Forest Exchange Land for Timber 1980767 'K' (Sacramento), Conditional Approval."

The area reserved pursuant to the filing of this application, excluding the Forest Exchange Sacramento 035953, is approximately 7,792.31 acres of which 7,508.48 acres are in the Stanislaus National Forest. Of this area approximately 4,752.31 acres have been heretofore reserved in connection with Project Nos. 95, 1219, 1790, and 2019; Power Site Reserve Nos. 613 and 688; or Power Site Classification No. 220.

Copies of the project maps (F.P.C. No. 2269-1 and 2) have been transmitted to the Bureau of Land Management, Forest Service, and Geological Survey.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-9046; Filed, Oct. 26, 1959; 8:45 a.m.]

[Docket No. DA-471—Oregon]

LANDS WITHDRAWN IN PROJECTS NOS. 1039 AND 1046

Partial Vacation of Withdrawals Under Section 24 of the Federal Water Power Act

OCTOBER 20, 1959.

The Forest Service, United States Department of Agriculture, through the Bureau of Land Management, United States Department of the Interior, has requested the restoration to their orig-

inal status of lands within the Willamette National Forest which were reserved pursuant to the filing of conflicting applications for preliminary permits for proposed Projects Nos. 1039 and 1046, particularly those lands within Tps. 21 and 22, Rgs. 5½ and 6 E., Willamette meridian, Oregon, in order that it may carry out a coordinated land management program, with special emphasis given to the high recreational and scenic values involved.

The lands in Rgs. 5½ and 6 E., to which specific reference is made, comprise the shore lands about Waldo Lake (elevation 5,410 feet), a natural body of water which is the source of the North Fork of the Middle Fork Willamette River.

Proposed Project No. 1039, for which an application for a preliminary permit was filed November 27, 1929, and subsequently amended, and proposed Project No. 1046, for which an application for a preliminary permit was filed December 21, 1929, proposed the development of power by the diversion-conduit method on Salmon and Black Creeks and the use of the water stored in Waldo Lake. The original application for proposed. Project No. 1039 contemplated the development of the North Fork Middle Fork. The Commission on January 9, 1933, authorized the issuance of a preliminary permit for proposed Project No. 1039 and denied the application for a preliminary permit for proposed Project No. 1046 and on March 28, 1933, said authorization was revoked and the application for a preliminary permit for proposed Project No. 1039 was denied.

The withdrawals herein reviewed pertain to those lands about Waldo Lake, the source of the North Fork Middle Fork, and down that stream to the community of Westfir—a short distance upstream from the backwater of the Lookout Point Reservoir (Meridian site) constructed by the Corps of Engineers—and along the Black and Salmon Creeks.

Under authority of a Special Use Permit issued by the Forest Service in 1909 a tunnel about 500 feet long with headgate structures was constructed for the development of storage in Waldo Lake which would discharge from Klovdahl Bay into Black Creek, just west of the south end of the lake. The water so withdrawn was to be used for developing hydroelectric power on Black Creek at a point located approximately 6.5 miles west of the lake, and on the south bank of the North Fork Middle Fork at Westfir and for irrigating areas in the vicinity of Eugene and Springfield. Other than construction of the outlet works, no further development has taken place.

The Corps of Engineers has suggested the construction of a new tunnel in the vicinity of the existing works, but at a lower elevation which would provide water for use at the Meridian and Dexter plants on the Middle Fork Willamette River during critical power years and would not require the acquisition of reservoir area. Maximum use of the reservoir at the Meridian site for power production is reported to be dependent on the Waldo Lake development and on the Hills Creek reservoir now under construction. However, the suggested construction of the tunnel and reregulation works at Waldo Lake has been found to lack economic feasibility.

The Willamette River Basin is one of the most rapidly developing areas of the Pacific Northwest and its power loads are expected to continue to increase with its future development.

A significant characteristic of the North Fork Middle Fork is that high flows occur during the winter and early spring months when the demand for power is high and when the main stem of the Columbia River and its upstream tributaries are flowing at relatively low rates. Thus hydroelectric generation in the basin is highest during the period in which capability of the Columbia River is low.

Power sites with high winter peaking capabilities will grow in importance in the Pacific Northwest in proportion to the rate in which installations are completed on the main stem of the Columbia River and its inland tributaries where flows are relatively low in the winter. The North Fork, Middle Fork and Salmon Creek in the area under consideration possess considerable amounts of potential power, especially power which could be made available during months of high demand. It is during such critical periods that the natural storage provided by Waldo Lake may become very desirable or even necessary in the operation of the Meridian and Dexter plants at maximum capacity.

It is recognized that the area about Waldo Lake has exceptionally high recreational and scenic values and those uses are now and probably will continue to be desirable. However, each parcel of land with frontage on the lake does have value for water-storage purposes, which at a later date may be found indispensable to a water-power project. Complete regulation would require only minor fluctuation of lake levels, and the tunnel, conduit and powerhouse installations at and near the lake can be so placed as not to detract materially from the scenic value and cause no appreciable interference with desirable recreational activities.

In the reach of the North Fork Middle Fork under consideration only one project having storage possibilities—variously referred to as the North Fork or Mile 6.7 site in the NE¼ of sec. 27, T. 20 S., R. 3 E., about 35 miles downstream from Waldo Lake—has been suggested recently for future development.

Some of the lands reserved pursuant to the filing of the application for a preliminary permit for proposed Project No. 1046, which, when surveyed, probably will be the SE¼NW¼ and the NE¼SW¼ of sec. 36, T. 21 S., R. 5½ E., Willamette meridian, Oregon, are occupied by the aforementioned control works and are proposed for use as the location for new regulatory facilities and the lands in lot 2, sec. 1, and in the NE¼NW¼ of sec. 12, T. 20 S., R. 3 E., reserved pursuant to the filing of the application for a preliminary permit for proposed Project No. 1039, have flowage value in connection with the suggested development of the Mile 6.7 dam site.

The Commission finds: Inasmuch as the lands under existing power withdrawals under section 24 of the Federal Water Power Act pursuant to the filing of the applications for preliminary permits for proposed Projects Nos. 1039 and 1046, except for those lands situated about Waldo Lake below the 5415-foot elevation, and those which, when surveyed, probably will be in the SE¼NW¼ and in the NE¼SW¼ of sec. 36, T. 21 S., R. 5½ E., Willamette meridian, Oregon, and those in lot 2 of sec. 1 and in the NE¼NW¼ of sec. 12, T. 20 S, R. 3 E., Willamette meridian, Oregon, have negligible or no value for purposes of power development, the withdrawals serve no useful purpose and vacation of the withdrawals as hereinafter provided is in the public interest.

The Commission orders:

(A) The existing power withdrawals pertaining to the following-described lands under section 24 of the Federal Water Power Act pursuant to the filing of the applications for preliminary permits for proposed Projects Nos. 1039 and 1046 are vacated:

WILLAMETTE MERIDIAN, OREGON

T. 19 S., R. 3 E.,
Sec. 36: SE¼NE¼, NE¼SE¼, W½SE¼.
T. 20 S., R. 3 E.,
Sec. 1: Lot 3, S½NW¼, W½SW¼;
Sec. 12: SW¼NE¼, NW¼NW¼, SE¼NW¼, W½SE¼;
Sec. 13: W½E½;
Sec. 24: W½NE¼, NE¼NW¼, NW¼SE¼, E½SW¼, SW¼SW¼;
Sec. 25: NW¼NW¼;
Sec. 26: Lots 2, 3, 4, N½NE¼, NE¼NW¼;
Sec. 27: Lots 8, 9, 10, 13, 14, 15;
Sec. 33: Lots 1, 2, SW¼NE¼, SE¼NW¼;
Sec. 34: NW¼NW¼.
T. 21 S., R. 3 E.,
Sec. 2: W½SW¼;
Sec. 3: SE¼SE¼; W½SW¼;
Sec. 4: Lot 3, S½NW¼;
Sec. 5: N½SE¼, E½SW¼;
Sec. 7: SE¼NE¼;
Sec. 8: W½NW¼, NW¼SW¼;
Sec. 9: SW¼NW¼;
Sec. 10: S½NW¼;
Sec. 11: SW¼NE¼, NW¼, SE¼, N½SW¼, SE¼SW¼;
Sec. 12: S½NE¼, SE¼NW¼, N½SE¼, SW¼;
Sec. 13: NW¼NW¼;
Sec. 14: N½NE¼, NE¼NW¼.
T. 19 S., R. 4 E.,
Sec. 31: Lots 1, 2, E½NW¼.
T. 20 S., R. 4 E.,
Sec. 25: SW¼SE¼, S½SW¼;
Sec. 26: S½;
Sec. 27: S½;
Eec. 28: E½SE¼;
Sec. 32: S½SE¼, SE¼SW¼;
Sec. 33: NE¼, SE¼NW¼, N½SE¼, SW¼ SE¼, SW¼;
Sec. 34: NW¼NW¼;
Sec. 36: NE¼, N½NW¼.
T. 21 S., R. 4 E.,
Sec. 4: Lots 2, 3, 4;
Sec. 5: Lots 1, 2, 3, 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 6: Lots 5, 7, E½NE¼, SW¼NE¼, N½SE¼, NE¼SW¼;
Sec. 7: N½NE¼, SW¼NE¼, NW¼, NW¼ SW¼.
T. 20 S., R. 5 E.,
Sec. 31: Lots 2, 3, E½NE¼, SW¼NE¼, SE¼NW¼, SE¼, E½SW¼;
Sec. 32: S½NE¼, W½NW¼, SE¼NW¼, NE¼SE¼;
Sec. 33: S½NE¼, NW¼SE¼, N½SW¼;
Sec. 34: S½NE¼, NW¼.

T. 21 S., R. 5 E.,
Sec. 6: Lot 1;
Sec. 25: SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 36: NE¼, W½SE¼.
T. 21 S., R. 5½ E. (unsurveyed),
Sec. 27: S½SW¼;
Sec. 28: S½S½;
Sec. 29: SW¼NE¼, SE¼NW¼, SE¼, NE¼SW¼;
Sec. 34: NE¼, NE¼NW¼;
Sec. 35: NW¼NW¼, S½N½;
Sec. 36: SW¼NW¼, W½SW¼, SE¼SW¼.

and the existing power withdrawals pertaining to all portions of the following-described lands situated about Waldo Lake at and above the 5415-foot contour under Section 24 of the Federal Water Power Act pursuant to the filing of the applications for preliminary permits for proposed Projects Nos. 1039 and 1046 are vacated:

WILLAMETTE MERIDIAN, OREGON

T. 21 S., R. 5½ E. (unsurveyed),
Sec. 13: S½SE¼;
Sec. 24: E½;
Sec. 25: E½NE¼, NW¼NE¼, NE¼SE¼;
Sec. 36: NE¼SE¼, S½SE¼.
T. 22 S., R. 5½ E. (unsurveyed),
Sec. 1: W½NE¼, NW¼SE¼, SE¼SE¼;
Sec. 12: E½NE¼.
T. 21 S., R. 6 E.,
Sec. 7: Lots 5, 6, 7, 8, 9, 10;
Sec. 8: Lots 4, 5, 6, 7;
Sec. 9: Lots 1, 2, 3, 4;
Sec. 16: Lots, 1, 2, 3, 4;
Sec. 18: Lots 4, 5, 6, 7, 8, 9, 10;
Sec. 21: Lots 1, 2, 3, 4;
Sec. 28: Lot 1;
Sec. 29: Lots 1, 2, 3;
Sec. 30: Lots 1, 2, 3;
Sec. 31: Lots 1, 2, 3;
Sec. 32: Lots 1, 2, 3, 4.
T. 22 S., R. 6 E.,
Sec. 5: Lot 5;
Sec. 6: Lots 1, 2, 3, 4;
Sec. 7: Lots 1, 2, 3, 4.

(B) The request insofar as it pertains to the lands in the exception in the finding herein is denied.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-9047; Filed, Oct. 26, 1959; 8:46 a.m.]

[Docket No. G-19097]

KINGWOOD OIL CO. ET AL.

Notice of Application and Date of Hearing

OCTOBER 21, 1959.

Take notice that Kingwood Oil Company, Operator, et al (Applicant), with a principal place of business in Oklahoma City, Oklahoma, filed an application for itself and Vanson Production Company, Aaron M. Weitzenhollfer, Davis & Law and L. D. Wyant, pursuant to section 7 (b) of the Natural Gas Act for permission and approval to abandon service to Cities Service Gas Company (Cities Service) from the Crawford B-2 Gas Unit, located in West Lawrie Field, Logan County, Oklahoma. This service is covered by a gas sales contract dated June 14, 1955, as amended, between Davon Oil & Gas Company, et al., as sellers, and Cities Service, as buyer, on file as Kingwood Oil Company, Operator, et al., FPC Gas Rate Schedule No. 3, as supplemented, all as more fully described in the application on file with the Commission and open to public inspection.

Applicant states that the Crawford B-2 Well, located on the Crawford B-2 Unit was never capable of delivering any large quantity of gas and for many months prior to August 21, 1958, the well was unable to produce any gas whatsoever due to the small amount of reserves and the pressure in the buyer's line. Included in the application is a letter agreement dated August 30, 1958, whereby Cities Service and Kingwood agree to terminate the contract of June 14, 1955.

Kingwood, Operator, et al., were authorized on April 22, 1957, in Docket No. G-10599 to render the service now proposed to be abandoned.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 25, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 13, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-9058; Filed, Oct. 26, 1959; 8:48 a.m.]

TARIFF COMMISSION

[22-6:5]

CERTAIN CHEESES

Notice of Supplemental Investigation and Date of Hearing

At the request of the President, the United States Tariff Commission, on the 21st day of October 1959, instituted an investigation supplemental to its investigation No. 6 under section 22 of the Agricultural Adjustment Act, as amended, with respect to the following named cheeses: Edam and Gouda cheeses; and Italian-type cheeses made from cow's milk in original loaves (Romano made from cow's milk, Regiano, Parmesano, Provoloni, Provolette, and Sbrinz).

Purpose of supplemental investigation. After investigation by the United States Tariff Commission under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), the President issued a proclamation imposing absolute annual quotas on imports of the above-named cheeses. On Edam and Gouda cheeses the aggregate annual quota is 4,600,200 pounds; on the aforementioned Italian-type cheeses the aggregate annual quota is 9,200,100 pounds. In accordance with the request of the President, the instant supplemental investigation is being undertaken under the authority of section 22(d) of the Agricultural Adjustment Act, as amended, for the purpose of determining what, if any, additional quantities of the aforementioned cheeses may be permitted to be imported without materially interfering with or rendering ineffective the price-support program of the Department of Agriculture on milk and butterfat. Section 22(d) authorizes the President to modify import restrictions imposed under the authority of section 22 whenever, after investigation by the Tariff Commission, he finds and proclaims that changed circumstances require such modification.

Hearing. A public hearing in connection with this supplemental investigation will be held in the Hearing Room, Tariff Commission Building, 8th and E Streets NW., Washington, D.C., beginning at 10 a.m., e.s.t., on November 23, 1959. Interested parties desiring to appear and to be heard at the hearing should notify the Secretary of the Commission, in writing, at its offices in Washington, D.C., at least three days in advance of the date set for the hearing.

Issued: October 22, 1959.

By order of the Commission.

[SEAL] DONN N. BENT,
Secretary.

[F.R. Doc. 59-9055; Filed, Oct. 26, 1959; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 209]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 22, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition

will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 62489. By order of October 21, 1959, The Transfer Board approved the transfer to Three "I" Truck Line, Inc., 106 North Court Street, Ottumwa, Iowa, of Certificate in No. MC 117892, issued June 22, 1959, to Kenneth F. Dudley, doing business as Three "I" Truck Line, 106 North Court Street, Ottumwa, Iowa, authorizing the transportation of: General commodities, with the usual exceptions including household goods, between Rock Island, Ill., and Chicago, Ill., serving the intermediate points of Moline, East Moline and Sandwich, Ill.

No. MC–FC 62580. By order of October 19, 1959, The Transfer Board approved the transfer to C. & C. Express, Inc., Carlstadt, N.J., of Certificates in Nos. MC 112007 and MC 112007 Sub 1, issued November 21, 1950 and July 22, 1953, respectively, to Nicholas J. Caravaglia, and Nunzio Caravaglia, a partnership, doing business as C. & C. Express Co., Carltadt, N.J., authorizing the transportation of: Materials used in the manufacture of wearing apparel from New York, N.Y., to points in Bergen and Passaic Counties, N.J., wearing apparel from points in the aforesaid counties, N.J., to New York, N.Y., merchandise which has been or is to be sold at bankruptcy, auction, judicial or liquidation sales between Philadelphia, Pa., and points in Delaware, New Jersey, and part of Maryland and New York Commercial Zone, shoes, dry goods, notions, trimmings, ladies', men's and children's wearing apparel, and store and office fixtures and equipment from points in N.J., to Philadelphia, Pa., and household goods from May 1 to October 31, inclusive, between Philadelphia, Pa., and Atlantic City, N.J. Herman B. J. Weckstein, Attorney, 1060 Broad St., Newark 2, N.J.

No. MC–FC 62581. By order of October 21, 1959, The Transfer Board approved the transfer to Eva Lou Johnson, doing business as Winters, Media, Pa., of remaining portion of Certificate in No. MC 33549 issued December 13, 1951, to Staub Transportation Company, a corporation, Philadelphia, Pa., authorizing the transportation of: Household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, and plants and flowers between points in Philadelphia, Montgomery, Bucks, Delaware, Lancaster and Chester Counties, Pa., on the one hand, and, on the other, points in New Jersey, Maryland, Delaware, District of Columbia and Virginia. E. Washington Rhodes, Attorney, 526 South 16th Street, Philadelphia, Pa.

No. MC–FC 62585. By order of October 21, 1959, The Transfer Board approved the transfer to Nixon Moving Co., Inc., 1431 Catherine St., Philadelphia, Pa., of portion of Certificate in No. MC 33549, issued December 13, 1951, to Staub Transportation Company, a corporation, 4155 Germantown Ave., Philadelphia, Pa., authorizing the transportation of: Household goods, plants and flowers between points in Philadelphia, Montgomery, Bucks, Delaware, Lancaster and Chester Counties, Pa., on the one hand, and, on the other, points in New York, Connecticut and Massachusetts, traversing Rhode Island for operating convenience only.

No. MC–FC 62640. By order of October 19, 1959, The Transfer Board approved the transfer to Paul J. McCoy, doing business as McCoy Transfer Company, Alton, Ill., of Certificate No. MC 28240, issued April 27, 1956, in the name of George L. McCoy and Paul J. McCoy, a partnership, doing business as McCoy Transfer Company, Alton, Ill., authorizing the transportation of general commodities, not including household goods and various specified commodities, over regular route, between Alton, Ill., and St. Louis, Mo., serving the off-route points of Wood River, East Alton, Roxana, Hartford, and Bethalto, Ill.; and general commodities, not including household goods, over irregular routes, from St. Louis, Mo., to Alton, Ill., and points within 50 miles thereof. A. A. Marshall, 3–5 Buder Building, St. Louis 1, Mo., for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 59–9052; Filed, Oct. 26, 1959; 8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 21, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35774: *Soda ash—Eastern points to Carolina and Tennessee points.* Filed by O. E. Schultz, Agent (ER No. 2514), for interested rail carriers. Rates on soda ash, in bulk, carloads from specified producing points in Michigan, New York, and Ohio to specified consuming points in North Carolina, South Carolina, and Tennessee.

Grounds for relief: Market competition at destinations with Saltville, Va.

Tariffs: Supplement 138 to Traffic Executive Association-Eastern Railroads, Agent, tariff I.C.C. A–1079 (Boin series), and supplement 132 to the same agent's tariff I.C.C. 4664 (Hinsch series).

FSA No. 35775: *Soda ash—Eastern points to Camp Croft, S.C.* Filed by O. E. Schultz, Agent (No. ER 2515), for interested rail carriers. Rates on soda ash, in bags, in bulk, carloads, from specified producing points in Michigan, New York, Ohio, and Pennsylvania to Camp Croft, S.C.

Grounds for relief: Market competition at destination with Saltville, Va.

Tariffs: Supplement 138 to Traffic Executive Association-Eastern Railroads, Agent, tariff I.C.C. A–1079 (Boin series), and supplement 132 to the same agent's tariff I.C.C. 4664 (Hinsch series).

FSA No. 35776: *Substituted service—M-K-T Lines for Consolidated Forwarding Co.* Filed by J. D. Hughett, Agent (No. 22), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Muskogee, Okla., on the one hand, and Dallas, Tex., on the other, on traffic originating at or destined to points in the territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to Agent J. D. Hughett's tariff I.C.C. No. 285.

FSA No. 35777: *Substituted service—C.R.I. & P. for Watson Bros. Trans. Co.* Filed by Middlewest Motor Freight Bureau, Agent (No. 196), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Tucumcari, N. Mex., on the one hand, and Chicago (Burr Oak), Ill., or Kansas City (Armourdale), Kans., on the other, on traffic from or to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 113 to Middlewest Motor Freight Bureau, Agent, MF–I.C.C. 223.

FSA No. 35778: *Substituted service—Pennsylvania Railroad for Motor Carries.* Filed by Central States Motor Freight Bureau, Agent (No. 31), for The Pennsylvania Railroad Company, and interested motor carriers. Rates on property loaded in trailers and transported on railroad flat cars between (1) Chicago, Ill., and Columbus, Ohio and (2) Detroit, Mich., and Pittsburgh, Pa., on traffic from or to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Central States Motor Bureau, Inc., Agent, tariff I.C.C. No. 29.

FSA No. 35779: *Substituted service—C.R.I.&P. for Central Transfer Co.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 32), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago, Ill., and Peoria, Ill., an traffic from or to points beyond in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Central States Motor Freight Bureau, Inc., Agent, tariff I.C.C. No. 29.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 59–9011; Filed, Oct. 23, 1959; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—OCTOBER

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during October. Proposed rules, as opposed to final actions, are identified as such.

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PART II

FEDERAL REGISTER

VOLUME 24 NUMBER 210

Washington, Tuesday, October 27, 1959

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1024]

[Docket No. AO-308]

MILK IN OHIO VALLEY MARKETING AREA

Decision on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Evansville, Indiana, on October 14–28, 1958, pursuant to notice thereof issued on September 17, 1958 (23 F.R. 7401), upon a proposed marketing agreement and order regulating the handling of milk in the Ohio Valley marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 7, 1959 (24 F.R. 6504), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

Preliminary statement. The hearing on the record of which the proposed marketing agreement and order, as hereinafter set forth, were formulated, was conducted at Evansville, Indiana on October 14–22, 1958, pursuant to notice thereof which was issued September 17, 1958 (23 F.R. 7401).

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions—(1) *Character of commerce.* The handling of all milk to be regulated by the proposed marketing agreement and order for the Ohio Valley marketing area, as defined hereinafter, is in the current of interstate commerce or directly burdens, obstructs, and affects interstate commerce in milk and its products.

The Ohio Valley Milk Producers Association, Evansville, Indiana, regularly furnishes the entire fluid milk requirements of seven milk plants located in Evansville, Indiana and Owensboro, Kentucky. Fluid milk products processed in these plants are distributed throughout the recommended marketing area in Indiana and Kentucky. Milk is regularly received at these plants directly from association members' farms located in Indiana and Kentucky and from the association's receiving station located in Russellville, Kentucky. Of the association's 756 members in August 1958, 465 supplied milk from farms located in Indiana and 291 from farms located in Kentucky. The association directs the deliveries of milk of its members so as to balance receipts in individual plants in relation to their need for milk. There is a continuous intermingling of milk, therefore, originating from the Indiana and Kentucky portions of the supply area. In addition, supplementary supplies of milk have been received at Evansville and Owensboro plants from plants located in Ordfordville, Brooklyn and Oregon, Wisconsin; Chicago, Illinois and Fort Wayne, Indiana. Milk is received in the Fort Wayne market from farms in the States of Indiana and Ohio.

A company operating one of the plants in Evansville also operates a plant in Owensboro. Bulk milk and packaged fluid milk products are moved between these two plants. Milk processed and packaged in Evansville is delivered to and distributed from the Owensboro plant throughout the Kentucky counties included in the recommended marketing area. Approximately two percent of the fluid sales from this plant also is disposed of in Montgomery County, Tennessee. Likewise, milk processed and packaged in the Owensboro plant is moved to the Evansville plant and distributed to consumers in Indiana. In addition, more than 10 percent of the total fluid milk distributed from this plant is disposed of in 11 counties in Illinois. Ten percent of the total fluid milk distributed from another Evansville, Indiana, plant is distributed in Kentucky.

Cottage cheese is regularly received in bulk from a plant in Carbondale, Illinois, at plants in Evansville and Owensboro where it is packaged and distributed in Indiana, Kentucky, Tennessee and Illinois.

Part of the milk supply for a plant located in Holland, Indiana, is procured from dairy farmers in competition with Evansville handlers and in eastern Indiana in competition with Louisville, Kentucky handlers. Approximately 85 percent of the total fluid milk distributed on retail and wholesale routes from this plant is distributed in Indiana and the remaining 15 percent is distributed in Kentucky.

Fluid milk is regularly received at a plant located in Madisonville, Hopkins County, Kentucky, from farms located in Kentucky and Tennessee. During August 1958, 29,963 pounds of milk was received from the latter source.

Fluid milk in consumer packages is supplied from a plant in Indianapolis, Indiana, to chain stores in Evansville, Owensboro and other municipalities in the marketing area in Indiana and Kentucky.

Plants located in Vincennes, Indiana, and Robinson, Illinois, distribute fluid milk products in the recommended marketing area and in other areas in Indiana and Illinois. Milk from a plant located in Louisville (regulated under the Louisville order) is distributed on wholesale and retail routes in Indiana and Kentucky counties in the recommended marketing area.

Milk in excess of fluid requirements of the seven plants located in Evansville and Owensboro, is normally disposed of by the producers' association through their Russellville receiving station to a manufacturing plant located in Columbia, Tennessee. On occasions, the association has disposed of reserve milk

to a manufacturing plant in Orleans, Indiana. At times the association has disposed of reserve supplies to plants located outside Kentucky and Indiana for fluid disposition by such plants. During 1957, such sales were made to plants in Alabama.

Reserve supplies of milk of other handlers who would be regulated under the recommended order are either made into manufactured products in their plants or disposed of to manufacturing plants in Indiana, Kentucky, Illinois and Tennessee. Manufactured products made from such milk are moved in interstate commerce or are sold in competition with similar products entering into interstate commerce.

(2) *Need for regulation.* Marketing conditions in the Ohio Valley marketing area warrant the issuance of a marketing agreement and order to regulate the handling of milk in such area.

The Ohio Valley Milk Producers Association, the proponent of the order for the Ohio Valley marketing area surrounding Evansville, Indiana and Owensboro, Kentucky, represents more than 750 dairy farmers and about 99 percent of the dairy farmers supplying milk to six distributing plants located in these cities. The Western Kentucky Milk Producers Association representing 65 of the 85 dairy farmers supplying a distributing plant at Madisonville, Kentucky also supported regulation for a number of counties comprising the sales area for their milk.

The Southern Indiana Milk Producers' Association, representing approximately 185 dairy farmers, who supply the major portion of the fluid milk requirements of the plant at Holland, Indiana, did not favor the proposed regulation.

The Ohio Valley Milk Producers Association has had a formal marketing contract with individual handlers in Evansville and Owensboro since 1952. The association supplies the full milk requirements of all the plants located in these cities. These plants are the primary outlets for the association members' milk. In recent years the association has also supplied a bottling plant located at Russellville, Kentucky, outside the proposed marketing area. Occasionally, shipments of supplemental milk are made to other relatively small bottling plants located in the proposed marketing area. The fluid milk supplied consumers by the six plants in Evansville and Owensboro and the plant in Madisonville is a substantial portion of the total fluid milk consumed in the hereinafter recommended 20-county marketing area.

Under the Ohio Valley Association's marketing contract with handlers milk, including the milk of a small number of nonmember-producers, is subject to classified pricing and marketwide pooling. The association's plan for pricing and pooling milk is similar to, and for the most part based on, that applied under nearby Federal orders regulating the handling of milk in Louisville and Paducah, Kentucky and Nashville, Tennessee. The association's arrangement with handlers provides for supplying their full fluid milk requirements and for assuming responsibility for handling any reserve supplies of milk. Reserve milk is disposed of primarily to manufacturing outlets. When available, occasional shipments are made to other markets for fluid disposition. Any supplies needed by the plants to fulfill their fluid requirements in addition to receipts from association members are procured by the cooperative association.

Under the association's pooling plan, all producers supplying milk to contracting handlers share equally in the benefits accruing from the fluid sales of such handlers and in the cost of carrying the necessary reserve supplies associated with such sales. During the 12-month period ending in August 1958 a total of 103.2 million pounds of milk was priced and pooled by the association for its members.

The association maintains a staff of employees to assemble and furnish monthly reports on prices, receipts and utilization of milk to its membership and contracting handlers. A continuous educational and milk quality program also is conducted among the membership. The association has a program for the reporting of receipts and utilization by handlers receiving member milk and for verifying such reports by auditing handlers' records. The auditing program, however, has been somewhat limited in scope and its operation has not been entirely satisfactory.

The marketing program of the Ohio Valley Milk Producers Association has conformed for the most part with sound marketing practices, contributed to market stability and has tended to promote orderly marketing conditions. During the past three or four years, however, changes in the procurement and distribution of milk have resulted in conditions which have gradually eroded the effectiveness of the association's program. Extensive competition has developed in the sale of fluid milk in this area between the handlers being supplied milk by the association and milk distributors whose supply of milk is not purchased on a classified basis. Keen competition has been experienced from plants located in Holland, Vincennes, Huntingburg and Indianapolis, Indiana and with plants located in Princeton, Henderson and Louisville, Kentucky. The milk supply for these plants is obtained from dairy farmers on the basis of a variety of different pricing plans. A number of them purchase their milk supply from dairy farmers at prices which are approximately the same as the average price resulting from the cooperative association's marketwide pool. Dairy farmers delivering milk to most of these plants do not have effective marketing programs and are uninformed as to the basis on which their milk is priced. Those handlers not under a classified pricing plan are able to expand their fluid sales in the area with milk purchased at prices which approximate the average association pool price. Evansville-Owensboro handlers, on the other hand, are required to pay a higher price (Class I) for milk for fluid use. As the number of distributors has increased in the metropolitan Evansville-Owensboro area the struggle on the part of new suppliers to gain a larger portion of the market, on the one hand, and the desire of local handlers to maintain their sales, on the other, has resulted in wholesale and retail price cutting. The most drastic price reductions have prevailed on weekends at grocery stores. Some local distributors have met the wholesale price reductions of their competitors. Heavier than usual weekend purchases by consumers were stimulated. These sporadic increases in purchases of milk made it necessary for the producer association to import milk to provide dealers supplied by them with an adequate supply of milk for their customers at the reduced wholesale prices. Following such weekends, consumer purchases of milk invariably fell below normal and the association found it necessary to dispose of excess milk to manufacturing outlets. Consequently, association members had to bear the cost of carrying a temporary surplus and received lower uniform prices than otherwise would have been received had it not been necessary to make temporary and sporadic importations of milk.

During the fall of 1958 the association was informed by handlers participating in the marketing plan that they must obtain a milk supply at prices commensurate with those paid by nonparticipating distributors or they could not successfully compete in the fluid market and provide a Class I outlet for the association members' milk. The association was unable to continue a negotiated price level commensurate with local supply-demand conditions. Furthermore, this occurred immediately preceding the period of seasonally low production and even more important, at a time when producer receipts showed a general downward trend. The Western Kentucky Milk Producers Association which also sells the milk of its members on a classified plan experienced a similar situation.

In an effort to promote market stability and more orderly marketing for all dairy farmers supplying milk to the area, the Ohio Valley Milk Producers Association communicated with some of the distributors who do not procure milk from association members to obtain their approval and acceptance of its marketing agreement and classified pricing and pooling plan. The association agreed to furnish such handlers a supply of milk necessary to fulfill their Class I and Class II requirements and to handle any additional reserve supply associated with such requirements. These efforts by the association to prevent disruption of its classified pricing and pooling plan and to maintain orderly marketing in the Ohio Valley area have not been successful. Such handlers failed or refused to accept the association's offer with the result that marketing conditions have continued to deteriorate and at times have become chaotic.

The issuance of an order to regulate the handling of milk in the Ohio Valley marketing area would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 by restoring and maintaining orderly marketing conditions for all milk produced for sale within the designated area and assure an adequate and dependable sup-

ply of pure and wholesome milk to consumers.

Basically, an order will provide for:

(a) A predetermined and dependable method for establishing prices to producers at levels contemplated under the Agricultural Marketing Agreement Act, as amended;

(b) The establishment of uniform pricing to all handlers for milk received from producers according to a classified pricing plan based upon the utilization made of the milk;

(c) An impartial audit made of handlers' records of receipts and utilization to further insure uniform prices for milk purchased;

(d) A means for assuring accurate weights and tests of milk;

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns from the sale of the necessary reserve supply; and

(f) Marketwide information for producers, handlers and consumers on receipts, sales and other data relating to milk marketing in the area.

(3) (a) *Scope of regulation.* It is necessary to designate clearly what milk and what persons would be subject to the various provisions of the order. This can best be done by providing definitions which set forth the categories of persons, plants and milk products for purposes of classification of milk and of application of other provisions of the order.

Marketing area. The Ohio Valley marketing area should include all the territory within Crawford, Dubois, Gibson, Perry, Pike, Posey, Spencer, Vanderburgh and Warrick Counties, all in the State of Indiana; and Breckinridge, Daviess, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, and Webster Counties, all in the State of Kentucky. This definition is intended to include all municipal corporations and Federal and State institutions, facilities or installations lying wholly or partly within the described area.

The Ohio Valley Milk Producers Association proposed a marketing area consisting of the counties of Posey, Vanderburgh, Warrick and Spencer in Indiana and Henderson, Daviess and Hancock in Kentucky. These seven counties are relatively densely populated and encompass the major population centers along this segment of the Ohio River, including Evansville, Indiana (population 137,000) and Henderson (population 20,000) and Owensboro (population 50,000), Kentucky. Certain handlers with plants located outside the seven-county area supported a marketing area restricted to these three cities. Other proposals considered at the hearing would include Butler and Edmonson Counties, Kentucky and Orange County, Indiana in addition to the 20 counties recommended herein.

More than 75 percent of the fluid milk requirements for the seven-county area proposed by the association is supplied from six milk distributing plants located in Evansville and Owensboro. These plants are furnished a full supply of milk by the association and they represent the principal outlet for milk of the more than 750 producers who are members of the association. The association also supplies the requirements of a bottling plant located in Russellville, Kentucky. This plant furnishes its entire output of fluid milk to an army installation located near the Kentucky-Tennessee border outside the recommended 20-county marketing area.

It would not be administratively feasible to segregate deliveries of fluid milk products made within the marketing area in the case of municipalities or institutions and installations which are partly within and partly outside the designated marketing area. Therefore, any such municipalities, institutions or installations located partly outside the marketing area are included, in their entirety, within the marketing area as herein defined.

All six of the Evansville-Owensboro distributing plants and a plant located at Henderson, Kentucky, dispose of fluid milk outside of the seven-county area. These outside sales range from 3 to 16 percent of the total sales at five plants and are 24 and 65 percent, respectively, at the other two plants. The outside sales of the first of these latter two plants, located in Evansville, are confined primarily to Gibson County and the other plant, located in Owensboro, distributes milk in most of the Kentucky counties included in the 20-county marketing area and in additional Kentucky and Tennessee counties. Another Evansville plant with 16 percent of its sales outside the seven-county area serves a number of Indiana and Illinois counties.

Substantial competition in the sale of fluid milk products by Evansville-Owensboro handlers is encountered from sales by a plant located in Holland (Dubois County), Indiana. Approximately 17 percent of the sales from this plant is made in Vanderburg County in which Evansville is located and more than 31 percent in the seven-county area. This plant disposes of milk in 18 of the 20 counties in the recommended marketing area and in 20 additional counties in Indiana and Kentucky.

A distributing plant located in Vincennes (Knox County), Indiana, sells about six percent of its total sales in the seven-county area. This plant receives milk from 124 producers and distributes fluid milk products in 36 Indiana and Illinois counties. Nine of these counties in Indiana are included in the recommended marketing area because of substantial sales by plants located at Evansville, Huntingburg and Holland which would be subject to full regulation. Sales in these nine counties represent slightly less than 25 percent of the distribution from the Vincennes plant. Sales in Illinois represent more than 30 percent of the total fluid sales of this plant and the remaining 45 percent is sold in areas outside the 20-county area in Indiana.

A distributing plant located in Huntingburg (Dubois County), Indiana, disposes of approximately 30 percent of its total fluid sales in the seven-county area and approximately 95 percent of such sales in the recommended 20-county marketing area. Outside the seven-county area such sales are made primarily in competition with sales from the Holland and Vincennes plants.

Two handlers, whose plants are located outside the marketing area and would be partially regulated, filed exceptions to including Gibson and Pike Counties, Indiana, in the marketing area. The total fluid milk sales in each of these counties is about evenly divided between handlers to be fully regulated and handlers to be partially regulated. Omission of these counties from the marketing area would eliminate partial regulation of one handler. Although two of the handlers to be fully regulated have a relatively small share of the total fluid milk distributed in Gibson and Pike Counties, the volume of such handlers' fluid sales in these counties accounts for a substantial part of their total fluid milk business. Approximately 15 percent of the total fluid milk distributed from the plant of one of these handlers is disposed of in Pike County and 2 percent in Gibson County. Approximately 24 percent of the total fluid milk distributed from the plant of the other handler is distributed in Gibson County.

If Gibson and Pike Counties were not included in the marketing area, a number of fully regulated handlers would be subjected to a competitive disadvantage in the procurement of milk for sale in territory in which there is extensive competition with unregulated milk, and two of these handlers would be at a competitive disadvantage with respect to a significant part of their total milk fluid sales. Including these two counties in the marketing area will not subject to full regulation, handlers whose primary sales area is outside the marketing area. Gibson and Pike Counties should be included in the marketing area, therefore, to reduce to a minimum the out-of-area sales of fully regulated handlers without subjecting additional plants to full regulation. One of the excepting handlers based his exceptions to including Pike and Gibson Counties in the marketing area primarily on the ground that his plant would be subject to full regulation if they were included. This conclusion apparently was reached on a misinterpretation of the pool plant definition. Pool plant status is to be based on fluid milk sales on routes in the marketing area in relationship to receipts of Grade A milk from dairy farmers and other plants, rather than solely on receipts from dairy farmers as assumed by this handler.

The Western Kentucky Cooperative Milk Producers Association, representing 65 of the 85 milk producers who supply a distributing plant located at Madisonville, Kentucky, proposed that Hopkins County, Kentucky be added to the seven counties proposed by the Ohio Valley Milk Producers Association. They also supported the inclusion of Muhlenburg County, Kentucky in the marketing area. Hopkins County is a relatively densely populated area (approximately 41,000) and there is a community of competition for Class I sales among the local distributing plants supplied by these producers, the plants located in Henderson, Owensboro, Evansville and Holland and a plant located in Princeton, Caldwell County, Kentucky. The sales area of

the Madisonville plant is primarily the counties of Hopkins, Muhlenburg, Webster, Union and Ohio in Kentucky. The plant at Princeton competes for sales throughout this same area and has substantial sales in six additional Kentucky counties located outside the proposed marketing area. Although these sales represent between 65 and 70 percent of the fluid distribution from the Princeton plant, such sales are made primarily in competition with handlers who would be subject to full regulation under the proposed order or handlers who are subject to regulation under the nearby Paducah, Kentucky order. The Princeton plant disposes of approximately 10 percent of its total sales in the Paducah marketing area and presently is subject to partial regulation under that order.

Butler and Edmonson Counties, Kentucky should be omitted from the marketing area. They are located on the southern edge of the sales area of two handlers who would be regulated by the order. Only a small proportion of the total sales of such handlers is made in these counties. Butler and Edmonson Counties are in the primary sales areas of two milk distributors whose plants are located to the south in Bowling Green, Kentucky. The exclusion of these two counties from the marketing area will not disrupt the orderly marketing of milk in the proposed marketing area and will afford a practical basis for separating the Ohio Valley marketing area from markets to the south of it. Likewise, the omission of Orange County, Indiana from the marketing area affords a practical basis for differentiating the Ohio Valley area from the area served by distributors primarily associated with other Indiana markets to the north.

The defined marketing area comprises the territory in which between 80 and 90 percent of the fluid milk handled by all distributors who would be subject to full regulation is marketed. Two handlers, one of which operates two plants, dispose of milk in 18 of the 20 counties included in the marketing area.

The recommended marketing area, in conjunction with other definitions provided herein, would result in full regulation of 18 handlers whose plants are located in the marketing area. Nine handlers whose plants are located outside the marketing area would be partially regulated as a result of distribution of fluid milk products in the marketing area. Two handlers regulated by another Federal order and two producer-handlers also distribute fluid milk products in the area.

The health regulations applicable to the production and handling of fluid milk are similar throughout the 20-county area. In both the States of Indiana and Kentucky, State health regulations have been established adopting the standards of the Milk Ordinance and Code of 1953 of the U.S. Public Health Service, Publication No. 229. These State regulations provide a minimum standard which may be, but seldom is, modified by more rigid requirements of local health authorities. The two States, as well as local health authorities, work in close cooperation with respect to the inspection of dairy farms and the approval of plants for distribution of fluid milk in the proposed marketing area. The degree of similarity of minimum health standards and the reciprocity of approval practiced throughout the proposed marketing area justifies the uniform application of the order to all producer milk.

Several additional counties in Indiana, Kentucky, Tennessee and Illinois included in the original proposals of milk distributors were denied for inclusion in the notice of hearing. It is neither administratively feasible nor necessary to include within the marketing area all the territory in which handlers may be distributing any portion of their sales of fluid milk products. In fact, it would be impractical, if not impossible, to define a territory in which there would not be some competition with unregulated distributors. The 20-county area prescribed herein together with other definitions reduce to a minimum the out-of-area sales of fully regulated handlers without subjecting plants to full regulation which are not primarily associated with the Ohio Valley area and which sell the major volume of their fluid sales in other markets. An order for the 20-county marketing area is feasible and reasonable. Experience and data on sales in and outside of the recommended marketing area assembled under an order will assist in evaluating any new developments or changes in conditions which may indicate a need for expanding the marketing area. If such a need exists, a hearing may be held and the order changed by usual amendment procedure.

Plants. The minimum class prices of the order and the pooling of the proceeds for milk should apply to that milk eligible for distribution as Grade A milk in the marketing area which is received from dairy farmers at plants with significant sales of fluid milk products to consumers on retail and wholesale routes in the marketing area. Accordingly, such plants should be defined as "pool plants", the dairy farmers supplying such milk as "producers", and such milk should be defined as "producer milk".

A "pool plant" should be any milk plant from which the total fluid milk products disposed of on routes (inside or outside the marketing area) are not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from other plants during the month and from which 25 percent or more of such receipts is disposed of as fluid milk products in the marketing area on retail or wholesale routes. The definition of a pool plant also should include any milk plant which receives Grade A milk from dairy farmers and from which fluid milk products equal to not less than 50 percent of such receipts during the month are moved to a distributing-type plant (described above). If such shipments are not less than 50 percent of such receipts at such plant during the months of September through December, provision should be made to continue the pool plant status of such plant during the following months of January through August, unless the operator of such plant makes prior written application for non-pool status to the market administrator.

As recommended hereinafter, the marketwide pooling of the proceeds for Grade A milk received from dairy farmers at pool plants is considered essential to promote efficient and orderly marketing of milk in this area. The establishment of reasonable performance standards for pool plants is essential to the proper functioning of the marketwide pool.

Milk is disposed of for fluid consumption in the marketing area from plants having various degrees of relationship to the market ranging from exclusive to temporary, or incidental, service to the market. Pool status should not be accorded to plants not meeting a reasonable standard of substantial and regular service to the market.

Performance standards should be such that any plant which has a substantial function in supplying milk for fluid consumption to this market may pool its sales and the dairy farmers supplying such milk may share in the marketwide equilization. Plants only temporarily or incidentally associated with the market, on the other hand, should not be permitted or required to equalize their sales with other plants in the market and should not be subject to full regulation. If a milk plant were to be permitted to share on a pro rata basis the Class I utilization of the entire market without being genuinely associated with the market then the differential paid by users of the Class I milk could be dissipated without accomplishing its intended purpose. If a plant were to be pooled and fully regulated merely by making a token shipment of milk or cream for sale as Class I milk then any milk plant selling a smaller share of its milk in Class I than the average for all pool plants might make such sales in order to receive equalization payments from the pool. The only other qualification such a plant would be required to meet would be approval by a recognized health authority as a supplier of Grade A milk.

Reserve milk is an essential part of any fluid milk operation. There always will be some excess milk at plants engaged primarily in supplying other markets and this will be particularly true in the months of flush production. Such plants and other plants engaged in substantial manufacturing operations might make token sales, or supply milk on an opportunity basis, to regulated plants when supplies may be short primarily to participate in the marketwide pool. Such plants do not represent dependable sources of milk for consumers in the marketing area. A distributing-type plant from which less than 50 percent of its Grade A milk receipts is distributed on wholesale and retail routes as Class I milk is not considered as being primarily in the business of fluid milk distribution and the pooling of milk of such plant would dissipate the marketwide proceeds from the sale of Class I milk.

A distributing plant from which 75 percent or more of its Grade A receipts is distributed in the form of fluid milk products outside the marketing area is not substantially and sufficiently associated with the Ohio Valley market to be subject to full regulation and partic-

ipate in the marketwide pool. The major portion of the fluid milk business at such a plant is in areas where the competition for fluid sales is primarily from other unregulated plants or from plants regulated under other orders. The full regulation of such plants could place them at a competitive disadvantage in supplying other areas with which they are more closely associated.

To reduce the territory from that recommended for inclusion in the marketing area and to provide full regulation of plants with less than 25 percent of their receipts distributed in the marketing area would not be feasible in this market. As previously shown, a reduction in the size of the marketing area would expose an unreasonable portion of the total fluid milk sales from regulated plants to competition from unregulated milk. The adoption of a standard of less than 25 percent under the present relatively wide distribution patterns of most distributing plants in this general area would unduly and unnecessarily extend the scope of the regulation. To increase the minimum fluid sales requirements within the marketing area as a means of reducing the scope of regulation would excuse from the regulation plants which have substantial sales in the market and thus an important influence on the returns to all dairy farmers who serve as the regular source of supply for this market.

Distributing plants serving the Ohio Valley marketing area in large measure are supplied milk directly from dairy farms. However, at times certain plants are supplemented with milk from receiving stations or supply plants. A supply plant moving 50 percent or more of the monthly receipts of milk from dairy farmers to distributing-type pool plants will identify any plant which is substantially associated with and whose primary function is to supply this market. The greatest need for milk from supply plant sources is during the period September through December—the months of lowest production. The months of September through December, therefore, should constitute the qualifying months for supply-type plants to be eligible for continuous pooling throughout the year.

During the months of January through August supplies of milk received at distributing plants directly from producers may be sufficient to supply most of the requirements for Class I milk in this market. It would be more economical to leave the more distant reserve milk at country supply plants for manufacturing or for movement directly to manufacturing outlets. Performance standards should not force milk to be transported to distributing plants in the months of seasonally high production for the purpose of maintaining eligibility for pooling. Any supply plant which meets the pooling requirements during September through December, therefore, should be a pool plant in each of the succeeding months of January through August unless the handler files a written request for nonpool status with the market administrator by the date on which the handler is required to file his monthly report in January.

The proposed pool plant definition in conjunction with the marketing area, hereinbefore defined, will regulate those plants and the milk of those dairy farmers who have an essential and substantial role in supplying consumers of this area with an adequate and dependable supply of fluid milk.

Any plant, regardless of its location, will have equal opportunity to comply with the standards and have its producers share proportionately in the total Class I sales for the market through the marketwide pool. Whether or not plants and dairy farmers become associated with the pool will depend on the economic considerations with which they are confronted such as prices, transportation costs and alternative outlets.

Some fluid milk products are disposed of in the marketing area from plants which are fully subject to the classification, pricing and pooling provisions of other Federal orders. It is not necessary to extend full regulation under this order to such plants which dispose of a major portion of their receipts in another regulated marketing area. To do so would subject such plants to duplicate regulation. Provision should be made, therefore, to exempt such plants from regulation under this order. Such plants, however, should be required to file reports of their receipts and utilization of milk to the market administrator in such manner as the market administrator may require and allow verification of the reports by him.

To distinguish different categories of plants and to facilitate formulating other order provisions, definitions of "fluid milk plant" and "nonpool plant" should be provided. A "fluid milk plant" should be defined so as to include pool plants as well as other plants that are not pool plants but from which fluid milk products are disposed of in the marketing area. A "nonpool plant" should be defined to refer to any milk plant engaged in receiving, processing, bottling or manufacturing milk, other than a pool plant.

The term "route" should be defined to distinguish between the various methods of disposition of fluid milk products. This definition is necessary to facilitate the application of other order provisions. The term route should refer to the method by which fluid milk products are distributed to wholesale and retail customers. It should not apply to the disposition of fluid milk products from a fluid milk plant to plants in which fluid milk products are processed; to a milk manufacturing plant; to distribution points; or to food processing plants, except for consumption on the premises.

Handler. The term "handler" should be defined to include the operator of a fluid milk plant and a qualified cooperative association with respect to milk of producer-members which it causes to be diverted from a pool plant to a nonpool plant for the account of the association.

The term "handler" is used essentially to identify those persons who are responsible for reporting their receipts and utilization of milk and on whom financial obligations are imposed by the order. Reports from the operator of all fluid milk plants are necessary to determine their status as pool or nonpool plants and to compute their obligations either as fully regulated pool plants or as partially regulated fluid milk plants. Efficient marketing of milk will be promoted in this market by providing a means for cooperative associations to divert milk not needed by pool plants to nonpool plants and assume the responsibility for the accounting and pooling of such milk.

Producer-handler. The term "producer-handler" should include a person who operates a dairy farm and a fluid milk plant and who during the month receives no fluid milk products from other dairy farmers or a nonpool plant.

There are relatively few producer-handlers in the Ohio Valley area. Their enterprises are relatively small and they engage in family-type operations. Their sales of milk represent a minute proportion of the fluid milk sales in the area. The sales of milk by producer-handlers have not had a disrupting effect on the orderly marketing of milk in this area. Accordingly, it is not necessary to subject their milk to full regulation to achieve the declared purpose of the Act.

The exemption from pricing and pooling of the family-type of operation should be safeguarded, however, to prevent other operations from masquerading as producer-handlers and abusing the exemption to the detriment of the market and the effectiveness of the order. It is necessary, therefore, to provide that to maintain producer-handler status the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and distribution of the milk shall be the personal risk of the person involved. The term producer-handler is not intended to include any person who does not accept responsibility and risk for the operation of the plant in which the milk of his own production is processed and bottled for sale. There is no practical distinction in function between a plant where milk may be "custom bottled" for a dairy farmer and the plants of handlers who buy milk from producers. The activities of the dairy farmer in distributing milk "custom bottled" compares to that of the "vendor" or "sub-dealer" who buys fluid milk products in packaged form from a regulated handler for distribution to consumers.

The producer-handler should be required to make reports of his receipts and utilization as the market administrator deems necessary to verify the continuing status of such person and to facilitate accounting and vertification of transactions which may involve other handlers.

Producer. The term "producer" should be defined to include those dairy farmers who produce milk on farms approved by the responsible health authorities for the production of milk for disposition as Grade A milk to consumers and which is received at a pool plant (including milk diverted as provided herein).

The intent of the order is to price and pool that milk of dairy farmers which

is eligible for fluid disposition and which is received by fluid milk plants which qualify as pool plants.

Plants distributing milk labeled as Grade A milk are required by the various health authorities having jurisdiction in the marketing area to obtain such milk from dairy farmers holding farm permits or who have been certified by such health authorities as sources of milk for Grade A distribution. Reciprocal approval is recognized by the various health authorities throughout the marketing area. Health department acceptability and delivery of milk at a pool plant are reasonable criteria for distinguishing the producers of milk which is to be priced and pooled under the order from other dairy farmers. For reasons stated later in this decision, producer-handlers should not be considered as producers under the order. In order to preclude duplicate regulation of milk, provision should be made also for excluding as producers persons whose milk is received at a pool plant if such milk is diverted under another order and is subject to the pricing and payment provisions of such other order.

Producer milk. The term "producer milk" should be defined to include the skim milk and butterfat which is contained in approved milk produced by persons qualifying as producers and which is received at a pool plant directly from such producers' farms (including milk diverted to other plants under certain specified conditions). The term is intended to include that milk approved for fluid disposition which is to be priced and pooled under the order. A definition of such milk provides a convenient reference for use in construction of other order provisions.

Milk which is diverted at the producers' farm from the pool plant where previously received to another pool plant or to a nonpool plant should be considered as producer milk and retained in the pool even though it is not received at a pool plant. Diversion of milk will promote efficiency in the marketing of milk temporarily not needed in the pool plant since it is frequently possible for such reserve milk to be hauled directly from the farm to another pool plant or to a nonpool plant for disposition. Most commonly these movements occur during the months of flush production.

The marketing program of the Ohio Valley Milk Producers Association, as previously discussed, provides for the allocation of milk to handlers in accordance with their needs and the supplying of such needs to the extent available from the closest sources of direct shipped milk. Production of producers located in the southern portion of the milkshed is used as a "balance wheel" for fulfilling the full supply requirements when needed. Therefore, during the months of seasonally high production the most efficient means of supplying the market requirements may be achieved by continuously diverting the milk of such producers.

Diversions of milk may be necessary also during the months of low production to accommodate temporary milk excesses during holiday periods or on weekends. Producer associations which are responsible for marketing the milk of its members, therefore, must be in a position to divert the members' milk throughout the year.

The diversion provisions should not encourage an excessive amount of milk to be associated with the pool. Accordingly, the operator of a pool plant should not be permitted to divert milk to a nonpool plant for more than one-half of the days of delivery during any month and a cooperative association should be subject to the same limitations except during the months of highest production (April through July). More liberal diversion provisions to cooperative associations are needed to expedite the orderly disposition of the seasonal reserve supply.

Other source milk. The term "other source milk" should be defined as all skim milk and butterfat utilized by a handler in his operations during the month, except fluid milk products received from pool plants, inventory of fluid milk products at the beginning of the month and current receipts of producer milk. The term thus defined includes all skim milk and butterfat in products other than fluid milk products from any source, including those produced at the handler's plant which are reprocessed, repackaged, or converted to other products during the month. Defining other source milk in this manner will: (1) Provide a general category of milk at pool plants which is not subject to pricing and pooling during the current month, (2) insure uniformity of treatment of all handlers under the allocation and pricing provisions of the order regardless of the source of the milk, and (3) be useful in the construction of the accounting and allocation provisions of the order.

Fluid milk product. The term "fluid milk product" is a useful reference in order construction, particularly in the reporting, transfer and allocation provisions. It includes essentially the same milk and milk products as Class I milk.

Definitions of standard terms common to most orders such as "Act", "Secretary", "person", "Department", "cooperative association", "Chicago butter price", "nonfat dry milk solids price" and "base" and "excess" milk (hereinafter discussed) should be included in the order for brevity in constructing other order provisions.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as either Class I milk or Class II milk.

Milk is disposed of in the market in a wide variety of forms containing different proportions of skim milk and butterfat, which may vary greatly from that contained in milk as it is first received from dairy farmers. There is a substantial difference between the market value of a pound of fluid skim milk and a pound of butterfat for use in a given class of utilization. Different handlers use different proportions of skim milk and butterfat within a given class and as between classes. A system of accounting for skim milk and butterfat separately, therefore, is desirable to provide uniform pricing of milk to handlers in accordance with the use of its component parts of skim milk and butterfat and for returning to producers a price in accordance with their use.

Milk and milk products are received at pool plants not only from producers but also from other handlers and nonpool sources. Milk from all such sources are commingled in the handler's plant. It is necessary to classify the skim milk and butterfat in all receipts of milk and milk products as a basis for determining the classification of producer milk to apply the classified pricing plan.

The extra cost incurred by producers in producing quality milk and delivering it to the market necessitates a price for milk for fluid consumption higher than the price of milk used in manufactured products. Milk for fluid distribution should be classified separately and priced at this higher level to provide the necessary incentive to producers through the uniform price to encourage the production and delivery of milk needed for such use plus the necessary reserve to cover daily, weekly and even monthly fluctuations in sales by handlers.

Class I milk should be defined to include all butterfat and skim milk (including the skim milk used to produce concentrated milk, reconstituted or fortified milk, skim milk and milk products) disposed of in the form of a fluid milk product for human consumption and any other skim milk and butterfat not specifically accounted for by the handler as Class II milk.

The term "fluid milk product" should be defined to include the fluid form of milk, skim milk, buttermilk, milk drinks (plain or flavored), cream (including sterilized cream), and any mixture of milk, skim milk or cream, except storage cream, aerated cream products, ice cream, ice milk, and milk shake mixes, eggnog, evaporated or condensed milk and sterilized products packaged in hermetically-sealed metal containers. The products included in Class I milk are disposed of to consumers in fluid form and are required by the health authorities in the marketing area to be made from milk or milk products from approved sources for Grade A milk.

Fluid milk products such as skim milk drinks to which extra solids have been added or concentrated whole milk disposed of for fluid use, would be included under the Class I milk definition. Products such as evaporated or condensed milk packaged in hermetically sealed cans would not be considered as concentrated milk.

Milk which is in excess of Class I uses at any time must be manufactured by the handler or disposed of to other plants for processing into manufactured products. These products are less perishable than fluid milk products and they must compete in the market place with similar products made from unapproved milk. Milk so used should be classified as Class II milk and priced according to its value for use in such products.

Class II milk should be defined to include all skim milk and butterfat used to produce manufactured dairy products,

in inventory of fluid milk products, disposed of for livestock feed and shrinkage and skim milk which is dumped. Class II would include the skim milk and butterfat used to produce such products as butter, cheese, (including cottage cheese), dried milk and skim milk, aerated cream products, ice cream, ice cream, ice milk and milk shake mixes, eggnog, other frozen desserts and mixes, evaporated or condensed milk, and sterilized products packaged in hermetically sealed metal containers. Cream placed in storage and frozen should be Class II milk because such cream is used primarily for ice cream and other manufactured products. Frozen cream removed from storage and other Class II products from any source, including those produced at the plant, which are repackaged, reprocessed and converted to another product in the plant during the month, would be considered as a receipt of other source milk during such month and assigned first to Class II milk under the allocation procedures hereinafter recommended.

Limited quantities of excess skim milk and certain fluid milk products, such as route returns, may need to be disposed of by handlers as livestock feed. Disposition for livestock feed as Class II milk affords a means of disposal of such products which may not be profitably utilized or disposed of for any other purpose. It is sometimes necessary, also, to dispose of small volumes of skim milk by dumping. Such skim milk should be classified as Class II milk if the handler notifies the market administrator, in advance, as prescribed by him, of the amount to be dumped, to afford him reasonable time to check such amount prior to dumping. No provision should be made for classifying as Class II milk, butterfat which may be dumped. Butterfat in the form of cream can be accumulated and stored to make possible efficient manufacture or movement to manufacturing outlets.

Because plant loss represents a disappearance of milk for which the handler must account but for which no direct return is realized by the handler, shrinkage should be considered as Class II milk to the extent that the amount is reasonable and is not the result of incomplete or faulty records.

A maximum shrinkage allowance of one-half percent of the total volume of milk physically received from producers at each pool plant should be provided with an additional allowance of one-and-one-half percent to the pool plant which processes such milk. Experience in this market and other markets shows that plants which are operated in a reasonably efficient manner and for which accurate records are maintained will not have total plant loss in excess of the maximums provided. Any shrinkage shown by plants in excess of these respective maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage maintenance of adequate records and efficient handling of producer milk.

In order to determine the amount of shrinkage associated with the handling of producer milk and recognize the different functions performed by pool plants, a scheme for the proration of shrinkage is necessary. Provision should be made, therefore, to prorate gross shrinkage at pool plants among milk physically received from producers, net receipts from other pool plants and other source milk.

Relatively limited shrinkage is normally associated in handling other source milk which is not received in the form of fluid milk products in bulk. To prorate shrinkage on the basis of total other source milk which would include all manufactured products that are reprocessed in the plant during the month would associate an unreasonable proportion of the shrinkage with other source milk, particularly when the skim equivalent basis of accounting is followed. Skim milk and butterfat in manufactured products are accounted for on a used-to-produce basis and any processing loss involved is included in the amount of skim milk and butterfat reported as used. The proration of shrinkage to other source milk, therefore, should be on the basis of such milk received in the form of fluid milk products in bulk.

To prevent duplication in shrinkage allocated to interpool plant movements of milk, the proration of shrinkage must be based on the amount received in excess of the amount transferred to other pool plants. The allowance on milk diverted between pool plants should accrue to the pool plant to which the milk is diverted and physically received. Similarly, no shrinkage should be allowed on producer milk diverted to nonpool plants. On milk received at a pool plant and transferred in bulk to another plant the transferring plant should be permitted up to the one-half percent maximum receiving allowance on such milk.

Exceptions by handlers to the maximum two percent limitation on skim milk shrinkage in Class I milk is without foundation particularly in view of the provision for classifying dumped skim milk and sales for livestock feed as Class II milk.

The accounting for skim milk in manufactured products should be based on the pounds of fluid skim milk required to produce such products. The skim milk and butterfat content in most products received and disposed of by handlers can be determined through recognized testing procedures. Some products received in the form of condensed and other more concentrated products represent a more difficult problem in that some of the water contained in the milk has been removed. In products manufactured in a pool plant the respective amounts of skim milk and butterfat represented by these products can be ascertained through appropriate plant records. In the absence of adequate records, and for products received from other plants, the amount of skim milk and butterfat represented therein should be determined by the use of standard conversion factors.

Condensed solids or nonfat dry milk may be used for reconstituting certain fluid milk products or to fortify skim milk drinks. Such solids are required by the health regulations to be made from Grade A milk and should be classified as Class I milk when disposed of in a fluid milk product the same as all other skim milk in Class I products. There is no sound reason why one portion of the nonfat solids contained in Class I products should be classified differently from another portion in this market. The pounds of skim milk disposed of in any reconstituted or fortified fluid milk product, therefore, should be accounted for as an amount equal to the nonfat milk solids contained in such product plus the water content normally associated with such solids in the form of whole milk. To promote uniformity in the cost of milk among handlers and to effectuate the allocation of current receipts of producer milk to Class I utilization to the fullest extent, the skim milk in all other source milk, therefore, must be accounted for on the fluid skim equivalent basis.

Butterfat and skim milk used to produce manufactured products, should be considered to be disposed of when so used and the sale of such products, therefore, need not be included on monthly reports of receipt and utilization. Handlers will need to maintain stock records on such products, however, to permit audit of their monthly utilization records by the market administrator. Class II products from any source used in the plant during the month must be reported as a receipt of other source milk. This will maintain priority of assignment of current receipts of producer milk to Class I utilization.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from producers should be responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for such limited quantities of shrinkage, which under certain conditions (as already described) may be classified in Class II, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

Transfers. Except for certain specified Class II uses, skim milk and butterfat in the form of a fluid milk product should be classified as Class I milk when so disposed of from the pool plant. Some fluid milk products, however, may be disposed of to other plants for Class II use. Under certain circumstances, therefore, classification may and should be determined according to the utilization in the plant to which transferred.

Fluid milk products transferred or diverted by a handler from a pool plant to another pool plant should be classified as Class I milk unless utilization as Class II milk is claimed for both plants on the handler reports submitted for the month

to the market administrator. Sufficient Class II utilization must be available at the transferee-plant, however, for such assignment after prior allocation of shrinkage and other source milk. Moreover, if other source milk had been received at the transferring plant during the month, the skim milk and butterfat should be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants.

Fluid milk products transferred or diverted from a pool plant to producer-handlers should be Class I because the milk is presumed, by the nature of their operations, to be needed for fluid disposition. Provision should be made for any milk received at a pool plant from a farm or plant of a producer-handler to be considered as other source milk at the pool plant. Without these provisions, producer-handlers could depend, unjustly, on producers under the order to carry the necessary reserve supply associated with their Class I sales without sharing such disposition with producers.

Milk, skim milk or cream transferred or diverted from a pool plant to a nonpool plant located less than 300 airline miles from the Courthouse in Evansville or Owensboro should be classified as Class I milk unless the following conditions are met:

(1) The handler reports such milk as Class II, (2) The operator of the nonpool plant maintains and makes available, as requested by the market administrator, his books and records for verification of Class II utilization, and (3) the Class I milk (as defined in the order) disposed of from the receiving nonpool plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers approved to supply Grade A milk and who are regularly associated with such plant.

If Class I milk disposed of from the nonpool plant exceeds the receipts of skim milk and butterfat from the dairy farmers regularly supplying such plant, provision should be made to classify as Class I an amount of the transferred or diverted milk equivalent to such difference. Such Class I sales, however, should not be used as a basis for duplicating the Class I classification of milk transferred to a nonpool plant from other plants regulated by this and other Federal orders. It is reasonable, therefore, that the amount of milk transferred to such plant and classified as Class I milk from any regulated market be not less than the market's pro rata share of the remaining Class I sales in such nonpool plant. The proposed method of classification and pro ration of Class I sales provide equality of treatment among handlers under the Ohio Valley order and also other orders in case of transfers to a common nonpool plant.

Fluid milk products transferred to nonpool plants located more than 300 airline miles from Evansville or Owensboro should be Class I milk. Fluid milk products moving such distances are normally for Class I uses. Adequate manufacturing facilities are available and the Ohio Valley handlers normally dispose of reserve milk to manufacturing plants located within a 300-mile radius. Exception to a 250 mile radius, contained in the recommended decision, was filed by the operator of a plant located in Vincennes, Indiana. Milk is moved from this plant for manufacturing purposes to a plant in New Bremen, Ohio, a point more than 250 miles from Evansville. As a partially regulated plant, the transfer provisions of the order would be applicable to milk transferred from the Vincennes plant pursuant to § 1024.75(b) of the order. Also, if such plant were operated in such a manner as to become a fully regulated plant, it is possible that certain plants supplying milk to the Vincennes plant also may become pool plants. The application of an automatic Class I classification to all transfers from such plants would be unreasonable and could seriously restrict the disposal of reserve milk from such plants. A 300-mile radius is necessary to accommodate these situations. The market administrator should be able to make the necessary verification of milk disposed of to nonpool plants within the area without incurring undue expense. It would not be administratively feasible or economically justifiable, however, for the market administrator to be required to verify shipments to nonpool plants beyond this area. The automatic classification as Class I milk will preclude the necessity for such verification.

This method of classifying transfers and diversions of milk to nonpool plants would safeguard the primary function of such provisions in promoting an orderly disposal of reserve supplies, and at the same time assure that milk transferred to nonpool plants is classified in accordance with its utilization. This would provide a degree of protection to the market during periods of short supply which might be caused by withdrawal of milk. Any price incentive would be removed for pool plants to supply milk at less than order Class I prices to nonpool plants for fluid disposition in other markets.

Allocation. The order class prices apply only to producer milk. It is necessary, therefore, if a plant has butterfat or skim milk other than that received from producers, to determine the amount in each class to be assigned to producer milk.

Producer milk is the primary and regularly available supply for fluid consumption in the marketing area. Current receipts of producer milk should be given priority over unpriced milk from other sources in the assignment of Class I utilization at regulated plants. This is necessary to insure stability of the market and for effective application of the classified pricing program of the order. If the order permitted handlers to obtain unpriced other source milk for Class I uses whenever it was advantageous to do so while producer milk in the plant was utilized as Class II, the market would be deprived of a dependable supply of milk and the order would not be effective in carrying out the purpose of the Act.

In general the allocation procedure, set forth in the order to carry out this objective, requires that skim milk and butterfat, respectively, remaining in each pool plant during each month be assigned to producer milk by making the following deductions from gross utilization starting with Class II milk, except as otherwise noted:

(1) Class II shrinkage of producer milk;

(2) Fluid milk products in consumer packages subject to Class I pricing under another order (from Class I);

(3) Other source milk not subject to Class I pricing provisions of another order;

(4) Other source milk in bulk subject to Class I pricing provisions of another order;

(5) Receipts from other handlers (according to classification);

(6) Beginning inventory;

(7) Add shrinkage deducted in (1); and

(8) Overage.

Other source milk which is not subject to the Class I pricing provisions of another order is allocated separately to facilitate the application of the compensatory payment provisions of the order. Provision is made to allocate from Class I milk, fluid milk products received in consumer packages if such milk were subject to the Class I pricing provisions of another order. This will have the effect of giving equal consideration to the packaged milk moved from a plant under another order whether such milk is distributed directly to consumers in the marketing area from such plant, as is the case in this market, or is delivered through a pool plant.

For accounting purposes ending inventory of fluid milk products is classified as Class II milk. Beginning inventory of such products is considered as a receipt and therefore must be subtracted in the allocation procedure. This is done following the subtraction of transfers from other pool plants so as not to interfere with the mechanics of classifying such transfers and to facilitate the reclassification of inventory which may be assigned to Class I milk during the month.

(c) *Class prices—Class I price.* For the first 18 months after the effective date of the pricing provisions, the price for Class I milk in the Ohio Valley marketing area should be computed by adding a differential of $1.15 for the months of April through July and $1.38 for the months of August through March to a basic formula price for milk containing 4 percent butterfat. Thereafter, the corresponding differentials should be $1.10 and $1.33, respectively.

The method of adding a differential to a basic formula price in determining the Class I price is necessary to give appropriate consideration to the national economic factors underlying changes in the general level of prices for milk and manufactured dairy products. Prices for milk used for fluid purposes in the Ohio Valley marketing area have a direct relationship to the prices paid for milk used for manufacturing purposes. Since the market for most manufactured products is nationwide, the prices of these products reflect general economic conditions affecting the supply and demand for milk. For these reasons, differentials over basic, or manufacturing, prices should be used to establish fluid

milk prices in this market. The basic price formula recommended herein, which is similar to that contained in Louisville, Paducah and other midwestern orders, will result in prices which appropriately reflect general changes in the value of manufacturing milk throughout this area.

Differentials over manufacturing prices are necessary to cover the extra costs of meeting quality requirements in the production of market milk and transportation costs to the fluid market, and to furnish the necessary incentive for dairy farmers to produce and deliver an adequate supply of quality milk to meet the demand for fluid consumption.

Class I prices should be established at a level which, in conjunction with the Class II prices hereinafter concluded to be appropriate, will result in returns to producers high enough to maintain an adequate, but no excessive, supply of quality milk to meet the requirements of consumers in the marketing area, including the necessary reserves. Class I prices must also be in alignment with those prevailing in other nearby regulated markets and should not be at levels which exceed the cost of obtaining milk of acceptable quality and regular availability from alternative sources.

Although comparable data in the record pertain only to receipts and sales of Evansville-Owensboro handlers, such receipts and sales make up a substantial portion of the total and reflect trends in the full marketing area. The supply-demand relationships in the Ohio Valley area during the latter part of 1957 and the nine month period in 1958 preceding the hearing are similar to those which have prevailed in most of the fluid milk markets in the region. In general, since August 1957, receipts of milk from dairy farmers have tended to decline and Class I sales to increase. The number of dairy farmers supplying fluid milk has declined and the daily average production per farm has remained about the same.

Receipts from dairy farmers averaged 137 percent of Class I sales during the twelve month period September 1956 through August 1957 and were 119 percent of Class I sales during October, the month of shortest supply. Receipts from dairy farmers in relation to Class I sales declined to an average of 123 percent during the September 1957–August 1958 period and averaged 113 percent during November, the month of shortest supply.

Daily average production per dairy farmer remained at an average of 360 pounds during these same two periods. Total receipts from dairy farmers were 110.5 million pounds in the September–August 1956–57 period compared with 103.2 million pounds in the same months of 1957–58. Total Class I sales during September–August, 1956–57 were 80.8 million pounds and increased to 83.5 million pounds during the September–August period 1957–58.

Producers proposed that the Class I price be determined by adding a differential of $1.50 per hundredweight to the basic formula price for 4.0 percent milk. Some handlers proposed a uniform monthly differential of $1.25 while others proposed seasonal differentials with an annual level of $1.25 per hundredweight.

A differential of $1.50 would result in a level of prices relatively higher than has prevailed in the past. It would not result in prices in line with the level of prices established under nearby Federal orders or in line with the cost of milk available from alternative sources.

Under the Ohio Valley Milk Producers Association's marketing agreement with the Evansville-Owensboro handlers the price for Class I milk of 4.0 percent butterfat content has been computed by adding a differential of $1.25 per hundredweight to a basic formula price similar to that proposed herein. The agreement price has been adjusted from time to time by negotiation between producers and handlers. The prices actually paid by Evansville-Owensboro handlers for Class I milk during 1957 and the first nine months of 1958 averaged $4.84 and $4.83, respectively. These prices are equivalent to a differential over the recommended basic formula price of $1.25 in 1957; $1.37 for the first nine months of 1958; and $1.30 for the full twenty-one month period.

The annual average Class I differential under the nearby Paducah, Kentucky order is $1.30, and in Louisville and Nashville the differential is $1.25. These differentials are for 3.5 percent butterfat content milk in Paducah, for 3.8 milk in Louisville, and for 4.0 percent milk in Nashville. The differential in Nashville is adjusted by a supply-demand adjuster based on receipts and sales in that market. No provision is made for automatic supply-demand adjustments in the Louisville and Paducah orders.

The Chicago milkshed represents a dependable source for reserve supplies of milk and historically has served as a supply source to this as well as to other fluid milk markets throughout the country. Shawano, Wisconsin is representative point in the Chicago milkshed from which comparative prices may be computed.

The Ohio Valley Class I price as proposed herein for 4.0 percent milk (excluding any handling charges), adjusted to Shawano at the rate of location adjustment hereinafter determined to be appropriate for this market, is computed to be in close alignment with the Chicago Class I price for 4.0 percent milk (excluding supply-demand adjustment), also adjusted to Shawano, during the 21-month period, January 1957 to October 1958.

From the above stated facts it is concluded that an average annual differential of $1.30 over basic formula prices for the 18 months immediately following the effective date of the Class I price section, and $1.25 thereafter, would reflect a level of Class I prices contemplated by the Act as necessary to insure this market with an adequate supply of producer milk. The immediately effective differential would reflect current supply-demand conditions in this market, and the automatic reduction in the Class I differential at the end of the 18 month period will recognize the need, over the longer term, for a close alignment of Class I prices in this market with those in the Louisville market. In addition, the application of the $1.30 differential for the first 18 months will provide experience and the opportunity to accumulate marketwide information necessary for the appraisal of the Class I price in light of local supply-demand conditions and to make any changes that might be necessary in light of such experience. Class I prices as proposed herein would result in a level of Class I prices in reasonable alignment with Class I prices in neighboring Federal order markets from which competition is experienced at the retail level. These differentials will result in Class I prices in line with the cost of obtaining a dependable supply of milk from alternative sources of supply.

In the recommended decision, seasonal pricing of Class I milk was not recommended in view of the history of pricing in the Owensboro, Madisonville, and Evansville portions of the marketing area and the decision for the base and excess method of paying for producer milk. Exceptions were filed by handlers located outside of these cities and not now using a base and excess plan, to the failure to adopt seasonal pricing and also to the proposed base and excess plan. The handlers stated in their exceptions that producers delivering to their plants were accustomed to and favored seasonal pricing. The Southern Indiana Milk Producers' Association also opposed a base and excess plan and favored either seasonal pricing or a fall incentive payment plan to encourage a more uniform pattern of production throughout the year. The majority of the producers, however, supported uniform Class I price differentials and the base and excess plan.

The operators of certain plants which will be subject to full regulation, including some who now purchase milk on a seasonal pricing basis, dispose of milk outside the marketing area in competition with milk procured on a seasonal pricing basis. A more appropriate alignment of order Class I prices with prices paid by competing plants on a month-to-month basis could be achieved by the adoption of seasonal pricing. Furthermore, seasonal pricing would more nearly reflect the pattern of pricing which has been followed by plants which would be subject to partial regulation and which would be required to equalize with the producer-settlement fund for sales in the marketing area. On the basis of all these factors, it is concluded that the base and excess plan should be retained, but a degree of seasonal variation should be included in the Class I differential. Although the producers' associations, which have used the base plan in the past, consider that seasonal pricing will tend to reduce the effectiveness of the plan, seasonal pricing will assist the regulated handlers in maintaining Class I sales outside the marketing area and thus promote maximum marketwide returns for producer milk. The average annual differentials decided upon above for the first eighteen months the order is in effect should obtain by adopting a differential of $1.15 for the months of April

through July and $1.38 for the other months of the year. Thereafter, the differentials should be $1.10 for April through July and $1.33 for other months of the year.

Class II price. The price per hundredweight for Class II milk of four percent butterfat content should be the basic formula price during the months of September through February and the average of prices paid at five local Kentucky and Indiana manufacturing plants plus 20 cents during each of the months of March through August.

The Ohio Valley Milk Producers Association proposed that the price for Class II milk be the average of prices paid the previous month for milk for manufacturing purposes f.o.b. plants in the United States, as reported by the Department, adjusted to a four percent butterfat content basis, plus 10 cents per hundredweight and that such price be reduced 20 cents per hundredweight for milk used to produce butter, skim milk powder and cheddar cheese during the months of March through August. Another producer group supported this proposal but also proposed that the Class II price be not less than the average of prices paid at local manufacturing plants plus 20 cents per hundredweight. Evansville-Owensboro handlers proposed that the price for Class II milk be the average of prices paid per hundredweight at local Kentucky, Indiana and Tennessee manufacturing plants plus 20 cents per hundredweight. This proposal is identical with the Class II pricing formula used in this market for several years under the Ohio Valley Milk Producers Association's marketing agreement. Other handlers did not oppose the proposals made by producers.

Some milk in excess of Class I requirements is necessary to maintain an adequate supply of fluid milk for the market on an annual basis. The Class II price for excess milk should be maintained at the highest level consistent with facilitating its use in manufactured products by pool plants or its movement to manufacturing outlets when not needed in the market. The Class II price should be at such a level that handlers, including cooperative associations, will accept and market whatever quantities of milk in excess of Class I needs as may arise from time to time. The price, however, should not be so low that handlers will be encouraged to procure milk supplies solely for the purpose of converting them into Class II products.

The historical pattern of the supply of milk from producers in relation to Class I sales shows that it will be necessary for handlers, and for the most part cooperatives, to dispose of reserve milk for manufacturing purposes to nonpool plants only during the season of highest production. Such season has normally included the months of April through July but sometimes includes the months of March and August.

During the months of September through February the supply of milk from producers in excess of the market's Class I needs has approximated, and at times has been less than, the minimum requirements of a necessary reserve. Handlers will be able to use, as they have in the past, most if not all the reserve milk during these months primarily in the manufacture of ice cream and cottage cheese for which they have historically used and preferred Grade A milk. There will be little, if any, need for handlers to dispose of reserve milk to local manufacturing outlets during such months. Thus, the Class II price during September through February should be at the highest possible level consistent with competitive conditions and marketwide pooling, and at the same time provide producers with proper incentive through the uniform price to supply the necessary market reserve. The basic formula price which has been found herein to properly reflect the national value of milk used to produce manufactured dairy products, will most appropriately reflect the value of Class II milk in this market during the September through February period. Had the basic formula price been the effective Class II price during such months in 1956, 1957 and in January and February 1958, it would have averaged $3.59, $3.61 and $3.60 per hundredweight, respectively, for 4.0 percent milk. The basic formula price will provide appropriate alignment with prices for reserve milk in similar uses in the Louisville market with which this market is closely related. The Class II (principally cottage cheese and ice cream) price under the Louisville order during these same periods averaged $3.53, $3.67 and $3.64, respectively, for 4.0 percent milk.

Handlers operating pool plants are not equipped to make dried or evaporated milk, cheese and other manufactured products which are the principal outlets for milk in excess of the necessary reserve supply. During the flush production season (March through August) it is necessary, therefore, for handlers to dispose of excess reserve milk to local manufacturing outlets. During such periods the Class II price should be equivalent to the prices paid by such manufacturing outlets. All local manufacturing plants have paid, for the past several years, "cooler premiums" of 15 cents per hundredweight over their announced prices for milk received from dairy farmers. In addition, most of such plants have paid other premiums for volume and other purposes in varying amounts. Consequently, a differential of 20 cents per hundredweight above the announced prices (not including premiums) at local manufacturing outlets will more nearly reflect the competitive value of manufacturing milk at this season of the year.

If the Class II price had been effective during March through August 1956, 1957 and 1958 such price would have averaged $3.26, $3.24 and $3.20, respectively. The proposal of producers to price milk used in butter, powder and cheese during the flush period would have averaged $3.23, $3.30 and $3.20 during the same periods.

Under the association's marketing agreement the average of prices paid at manufacturing plants in Kentucky, Indiana and Tennessee have been used as a basis for pricing Class II milk. Such prices have been identical with those paid at the five local manufacturing plants during the past few years. It is not necessary, therefore, to use prices paid at Tennessee plants in determining the Class II price. Furthermore, if differences develop between the prices paid by such plants in the future, the selected plants will be more reflective of local competitive prices in this market than a combination of plants from all three states.

Butterfat differentials. Butterfat and skim milk are to be accounted for separately for classification purposes. Class I and Class II prices are to be announced for 4.0 butterfat content milk. It will be necessary, therefore, to adjust class prices by a butterfat differential in accordance with the average test of milk in each class to reflect differences in value due to variations in butterfat content from 4.0 percent.

The values resulting from multiplying the average price of 92-score butter at Chicago by 0.125 for Class I milk and by 0.120 for Class II milk will provide an appropriate basis for adjusting such prices in this market for each one-tenth variation in butterfat content. Butter prices should be used to reflect changes in the central market prices of butterfat in the differential and to conform with the practice followed in most fluid milk markets for adjusting prices for butterfat variations.

The Ohio Valley Milk Producers Association's contract with handlers provides for identical Class I and Class II differentials at 0.12 times the butter price. An average differential factor of 0.125 for Class I, however, will establish a more realistic relationship between class prices for butterfat and a value for milk used for cream and other higher fat content products more in line with competitive values. It will be identical with the level of differentials in the nearby Louisville and Paducah orders and will promote close Class I price alignment for skim milk and butterfat between Federal order markets in this region. In view of the decision to incorporate seasonal Class I price differentials, the butterfat differential factors should be 0.122 during the months of April through July and 0.126 during the other months of the year.

In order that the Class I butterfat differential may be announced at the same time the Class I price is announced, it should be based on the price of butter for the preceding month. Class II prices and butterfat differentials should be based on current paying prices and announced after the end of each month. Handlers will know, however, that the cost of Class II milk will tend to follow daily or weekly product prices during the month and that their cost of milk will be the same as their competitors and in line with prices paid by purchasers of milk in manufacturing outlets.

The butterfat differentials used in making payments to producers should be calculated at the average of the Class I and Class II differentials weighted by the proportion of butterfat in producer milk classified in each class each month to reflect changes in the actual usage of such butterfat in each class.

Location differentials. A schedule of location differentials should be provided to adjust Class I prices to the location of

the plant from which milk is moved to the marketing area.

Milk at farms or at plants has a progressively lower value with respect to the Ohio Valley market as such farms or plants are located farther away from the market. This difference in value is related to the cost of transporting the milk from the respective locations to the market. The order should contain appropriate provisions to recognize such differences in value according to the location of the plant where the milk is received. Such a provision is necessary to provide a cost of milk among plants and returns for milk among producers in accordance with its economic value to the market. This should be accomplished by a schedule of location adjustments applying at plants in accordance with their location in relation to the two principal centers of consumption in the marketing area—Evansville or Owensboro, whichever is nearer.

To be equitable to all handlers, the minimum Class I price to be paid for producer milk should not be dependent upon the type of plant receiving the milk. To the extent that milk is received at distant plants from producers and brought to the marketing area by a handler, the handler has assumed a transportation cost which might otherwise be borne by producers. Accordingly, the Class I price should be adjusted downward at such plants to reflect the cost of hauling milk to the marketing area.

It is economically more feasible to supply the fluid milk needs of the market from those farms or plants nearest the market before bringing in milk from more distant plants. Location adjustments at supply plants should apply, therefore, to that milk moved to a pool plant in the form of a fluid milk product which is assignable to Class I milk after first assigning to the available Class I in the plant to which the milk is moved, direct receipts from producers and receipts of fluid milk products from other pool plants at which no adjustment applies. The location adjustment provisions should apply also to milk disposed of as Class I milk from distant distributing plants. Such application of location adjustments would recognize the functional relationship of supply plants to the market and price Class I milk at all plants in relation to its value for consumption in the marketing area.

No location adjustments should apply at plants located less than 80 miles from the basing points. This area will encompass all the territory within the proposed marketing area. It will provide uniform Class I prices at all plants which would be subject to full regulation. Milk can be moved most efficiently directly from the farm to distributing plants within this area. Under the conditions existing in this market, there is no need to provide a location adjustment at plants at different locations within the confines of this area.

A location differential rate of 1.5 cents for each 10 miles should be used for adjusting Class I prices. This rate approximates the cost of moving milk to the marketing area from distant points by efficient means and conforms closely to the rates applied under other Federal orders. Provision should be made, therefore, for plants located 80 but less than 90 miles from the nearest of the basing points to receive a differential of 13 cents per hundredweight and for each additional 10 miles that the plant is located from the nearest basing point, the amount should be increased 1.5 cents per hundredweight.

No location adjustments should be allowed to plants on Class II milk. Because of the low cost per hundredweight of milk involved in transporting concentrated finished products, there is little difference in the value of milk for manufactured uses associated with the location of the plant receiving the milk.

Payments on unpriced milk. The order should provide for payments to the producer-settlement fund with respect to unpriced milk which is allocated to Class I at a pool plant and for similar payments by partially regulated nonpool plants on Class I sales in the marketing area.

The rate of payment on such milk should be equal to the difference between the Class I and Class II price during the months of April through July and the difference between the Class I price and the uniform price during the months of August through March.

Basically, all other source milk which might be utilized for Class I milk in the marketing area would be produced as part of a supply intended primarily to meet the demand for milk for fluid consumption in some area other than the Ohio Valley marketing area or produced for manufacturing outlets but not used for such purposes in the area for which it was produced. If part of the regular supply of another fluid market, it could be only milk in excess of the amount needed for fluid disposition in such market.

If unregulated plant operators were allowed to dispose of surplus milk in the regulated marketing area, either through pool plants or directly to consumers, without some compensating or neutralizing provision in the order, the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning a reasonable level of prices to the producers of milk for the regulated marketing area would be defeated. Inefficiency in the marketing of milk would be encouraged because there would be incentive for the regulated handlers to obtain milk for Class I uses not from the regular and normal sources of supply but from sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk is therefore a necessary provision of this order.

There may be other situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and yet it would be neither necessary nor desirable in terms of effective regulation to bring the plants fully under regulation. This may be true with respect to shipments of milk to pool plants for the purpose of converting it into manufactured products. Also, milk may be disposed of in the regulated marketing area as Class I milk from plants which are not primarily or even regularly engaged in supplying the marketing area. If relatively small, incidental or accidental shipments of milk into the marketing area would bring under total regulation all the milk at the plant from which such shipments are made, undue hardship might result to the operator of such plant and for the farmers delivering the milk involved. Compensatory payments are necessary to provide a means by which full regulation of the handling of milk at such plants may be avoided and, at the same time, maintain the integrity of classified pricing and marketwide equalization which are necessary to insure orderly marketing in this area.

When milk is available in substantial volumes from nonpool sources, pool plants could obtain such milk at prices reflecting its value as surplus milk which would approximate the Class II price under the order. During the seasonally high production months of April through July, therefore, the rate of payment on other source milk allocated to Class I should be the difference between the Class II price and the Class I price adjusted (by the same rate as is applied at pool plants) to the location of the plant from which such other source milk was received from farmers. This rate of payment will reflect generally the difference in value between unregulated and regulated milk for Class I use at this time of the year. During the months of August through March, the milk supplies in this region tend to be shorter than other months. It is not likely that other source fluid milk products will be available to the market at surplus prices. It reasonably may be expected that during such months such milk would be available from unregulated sources at prices not less than the level of the uniform price under the order. Compensation payments during these months, therefore, should be the difference between the uniform price to producers and the Class I price, adjusted to the location of the plant from which such fluid milk products are supplied. The relationship between the supply and demand for milk in the market in the August through March period tends to fluctuate from year to year according to marketing conditions. These conditions will generally prevail also in surrounding markets which are potential sources of supply for unpriced milk. Thus, the rate of compensation payment based on the difference between Class I and uniform prices will adjust itself automatically in these months in accordance with the relationship of Class I milk to the total milk pooled. This will tend to reflect conditions in the area from which unpriced milk may be obtained. The rates herein proposed are those which will best effectuate the Act under current marketing conditions in this area.

Other source milk used in the form of concentrated milk products should be

considered to be from a source at the location of the plant where it is used. In some cases there will be no, and in all cases insignificant, transportation charges in terms of their equivalent in fluid milk. By following this procedure, the compensation payment on other source milk derived from concentrated products, such as, condensed milk or nonfat dry milk, would be comparable to that on any other source milk which is allocated to Class I milk.

The integrity of the regulation can be maintained by providing an alternative method of determining compensatory payments at a distributing plant which has sales of fluid milk products in the marketing area but which fails to qualify as a pool plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of: (1) An amount equal to the volume of Class I milk disposed of in the marketing area at the same rates as apply to unpriced milk allocated to Class I at pool plants, or (2) the amount by which total payments to dairy farmers for such plant are less than the total amount of the plant's obligation to producers if such obligation is computed as if such plant were a pool plant.

If the partially regulated handler elects to make payments under the first option, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, he will not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk will be determined in exactly the same manner as if he were a fully regulated handler.

Affording this last option to partially regulated nonpool plants will adequately protect the regulatory plan in this market. None of the operators to which this option may apply regularly obtain milk for such plants from dairy farmers located in a supply area that overlaps to any significant extent the supply area of plants to be fully regulated under the order. The option to pay directly to dairy farmers who regularly supply such nonpool plants with milk at the full utilization value of such milk in accordance with the order, therefore, will not place the operators of pool plants at a competitive disadvantage in the procurement of their milk supply. Also, under the present organization of the market there will be no significant diversion of the revenue derived from the Class I sales in the marketing area to farmers only incidentally associated with the market at the expense of pool producers of milk for which minimum class prices are established and who are relied upon to produce an adequate and dependable supply of approved milk for the marketing area.

Under the second option, the operator of the nonpool plant would be required to file a complete report of receipts and utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices, adjusted for location and butterfat content, in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll. Only such payments would be allowed as had been made to such farmers by the 18th day following the end of the month. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized by the dairy farmer.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay the difference between the class prices on his in-area sales he should be required to pay administrative expense only on such quantities of milk so disposed of in the marketing area. If he elects the payment based on the utilization value of his milk he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts allocated to Class I milk the same as is required of pool plants. Obviously, the second option necessitates as much verification of the receipts and utilization by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and products sold as well as a complete audit of the books and records for such plant.

No compensation payment should be required on milk classified and priced as Class I under another Federal milk marketing order. The minimum prices for Class I milk under other Federal orders where Ohio Valley order handlers might obtain supplemental supplies approximate or exceed the Ohio Valley Class I price when allowance is made for location of the supplying plants. Because handlers operating plants under other Federal orders must pay for producer milk on a utilization basis at prices determined in accordance with the same statutory standards of pricing as are employed here, they would not be in a position to dispose of their surplus producer milk in the Ohio Valley marketing area for Class I use to the disadvantage of local producers.

Handlers proposed that no compensatory payments be required on other source milk received at a pool plant during any month when receipts of producer milk are below 115 percent of Class I sales. Such a provision would not be to the best interest of the market because the way would be open for handlers to limit their purchases of producer milk and thereby bring about, over the longer term, an uneconomical procurement pattern for the market at the expense of local dairy farmers. Furthermore, the provision for applying the difference between the Class I price and the uniform price during the months of the year when supplemental supplies might be needed provides an adjustment in the compensatory payment rate in relation to the producer milk receipts and Class I sales ratio of the market. Thus, with producer milk receipts at a ratio of less than 115 percent of Class I sales, the compensation rate would be relatively small, or completely eliminated.

(d) *Distribution of proceeds to producers.* A marketwide equalization pool should be provided for distributing to producers the proceeds from the sale of their milk.

A marketwide pool should be adopted to assure each producer that he will receive prices for his milk based on his pro rata share of the Class I and Class II sales of the entire market. The "uniform", "base", and "excess" prices, as the case may be, that a producer is to be paid will depend on the overall utilization of all producer milk at all pool plants during each month.

The marketwide pool permits a handler to either maintain a manufacturing operation in his plant to handle the reserve supplies of milk or limit his operations primarily to the handling of milk for Class I purposes without affecting the uniform prices payable to his producers as compared with other producers. The facilities in the plants of Ohio Valley handlers for handling reserve supplies of producer milk vary considerably. Some of the handlers are equipped to handle their seasonal reserve supplies while others have extremely limited manufacturing facilities. Some pool plants are equipped to make cottage cheese, butter, bulk condensed skim and ice cream. None of the plants is equipped to make dried or evaporated milk, cheese or other manufactured products which are the principal outlets for seasonal reserve supplies.

The Ohio Valley Milk Producers Association supplies Evansville-Owensboro handlers with their full requirements of fluid milk and handles any reserve supplies associated therewith not wanted by handlers. Such reserves are normally moved to manufacturing outlets through the association's Russellville, Kentucky receiving station. A marketwide pool will make it possible for the producers' associations to assist in handling or diverting seasonal reserve milk and retaining producers on the market who are needed to fulfill the year-around market requirements. It assists in spreading the cost of carrying the necessary reserves for the market among all producers rather than by those producers associated with certain plants or certain producer associations which assume the responsibility of handling reserve supplies. The marketwide pool will contribute to efficient marketing of reserve supplies, promote market stability and assist in maintaining an adequate and dependable supply of producer milk.

Base and excess plan. The "base and excess plan" for distributing the returns for milk among producers should be employed in connection with the marketwide pool.

The base and excess method of distributing milk returns during the months of heaviest production has support among most of both producers and handlers in the Ohio Valley area. Base and excess plans have been used for a num-

ber of years by the Ohio Valley Milk Producers Association and the Western Kentucky Milk Producers Association, as well as by a number of handlers who do not purchase their milk from these associations.

Because of the seasonal variation in milk production, there is need for an incentive to maintain production in the fall and winter months relative to the spring and summer levels. By providing returns related directly to a producer's ability to deliver additional milk in the fall and winter as compared with deliveries during the season of flush production, a more even milk production pattern will be encouraged. Interruption in the use of a base plan at this time might result in increased seasonality of production to the detriment of the market.

The order should provide for each producer to establish a base dependent upon his deliveries of milk to pool plants during the months of September through February, the months during which producer receipts are relatively low in relation to Class I sales. During these months, as well as in all other months in the period of August through March, producers should receive the marketwide uniform price for all milk which they deliver to pool plants.

For each of the months of April through July, the months during which producer receipts are relatively high in relation to Class I sales, separate uniform prices for base and excess milk should be computed so that Class I sales would be first assigned to base milk. "Base milk" should be defined as milk received at a pool plant from a producer during any of the months of April through July which is not in excess of an amount equal to the daily base of such producer multiplied by the number of days in such month. Producer milk classified in Class II should be assigned first to excess milk. If Class I disposition is more than the base milk received from producers in any month, such additional value of Class I milk should be allocated to excess milk and the excess blend price increased accordingly.

The daily base of each producer should be calculated by the market administrator by dividing the total pounds of milk received at all pool plants from such producer during the months of September through February by the number of days from the first day such milk was received during these months to the last day of February, inclusive, but not less than 120 days. A minimum of 120 days is reasonable to establish bases for new producers who may enter the market during the base-forming period. To provide a shorter period could weaken unduly the effectiveness of the plan. On or before March 15 of each year the market administrator should be required to notify each producer and the handler receiving milk from him of the daily base established by such producer.

It is necessary to provide certain rules in connection with the establishment and transfer of bases in order to provide reasonable administrative workability of the plan. Such rules should outline specifically the method for calculating the base for each producer and set forth clearly and unequivocally the procedure to be followed for transferring bases. It is desirable that the need for administrative discretion and restrictive conditions in connection with the application of base rules be kept at a minimum.

A producer who adjusts his production under the base and excess plan to even out seasonal variations may suffer undue financial loss if for some reason he is unable to avail himself of the benefit of the base earned by him. The producer associations proposed, therefore, that a base of a producer discontinuing production be transferable to a person to whom the herd is sold. In addition, because tenant-landlord arrangements in Kentucky usually are effective on January 1 of each year, during the base-forming period, proponents suggested that provision be made for tenants to either retain their proportionate share of a base or be able to transfer such base to another person who assumes ownership of the tenant's share of the cows. The assignment of bases in accordance with the ownership of the cows would create a number of administrative difficulties and would be impractical. The transfer of partial bases without restriction would unduly weaken the base plan and would be administratively burdensome. Producers did not favor a base-forming period terminating prior to January 1 as a means of accomodating the tenant-landlord problem because of precedent in this market and the substantial influence, under a relatively short base-forming period, of disruption in deliveries caused by accidental or unusual circumstances.

Provision should be made, therefore, for a producer to transfer his entire base to another person if such person assumes the ownership or operation of the farm on which the base is established. In the case of jointly held bases provision should be made for the transfer of the entire base to one of the joint holders or the transfer of a proportionate share of a jointly held base to another person if such latter person assumes the ownership or operation of the farm on which the base to be transferred was established. Under these proposed rules a tenant will be in a positon to transfer his portion of a jointly held base to a new tenant who may assume the operation of a farm on which the jointly held base was established. Likewise, if the base is formed in the name of the tenant, such base may be taken with him to another farm. The tieing of bases to the farm for the purpose of transfer is administratively feasible in this market and will provide a reasonable basis for accommodating persons retiring, entering military service, or dissolving partnerships and landlord-tenant arrangements.

The base plan should be safeguarded by precluding the duplication of the base credit that could result from the provisions for the transfer of bases and the establishment of a full base on a minimum of 120 of the 180 days in the base-forming period. When a base is transferred and is to be combined with a base held by the transferee, the total producer milk deliveries during the base-forming period of all persons in whose name such bases were earned, therefore, should be combined and the total milk deliveries of such persons to be divided by the number of days from the earliest date of delivery during the base-forming period by any of such persons to the last day of the base-forming period.

Similarly, if a producer ceases to deliver milk in his name during the base-forming period but milk is delivered to a pool plant from the same dairy production facilities during the remainder of such period, the base earned by both producers should be combined as set forth above.

The transfer of a base should be effective only on the first day of the month during which a request is received on forms approved by the market administrator and signed by the person transferring the base and the person to whom it is to be transferred.

The order may become effective after the start of the base-forming period. At some later time, plants may become associated with this market and qualify as pool plants after the start of the base-forming period. In order that the base plan will be effective for producers at all pool plants during the base-operating period, provision should be made for the assignment of a base to each producer at such plants entering the market in accordance with the rules applying to producers supplying plants which are pool plants during the entire base-forming period. The operator of such a plant, of course, must provide the market administrator with adequate records of deliveries of individual dairy farmers during the base-forming period for the calculation of bases.

In view of the almost universal use of the base plan in this area and the issuance of this recommended decision prior to the start of 1959 base-forming period, it is reasonable to expect that all plants that would be subject to full regulation will have satisfactory records of receipts from individual dairy farmers for the determination of bases to take effect with the effective date of the price provisions of the order.

The uniform prices, including base and excess prices, should be computed for milk of 4.0 percent butterfat. This is in accordance with current marketing practice in this area.

In distributing the proceeds to producers a differential should be applied, as previously discussed herein, to recognize different values of milk in accordance with its butterfat content.

Location differentials, heretofore discussed, should be applied to the price paid producers for base milk during the months of April through July and to the uniform price during other months. Since excess milk will represent producer milk classified principally in Class II milk, to which no location differential is applicable and which will be a price in line with the competitive price for manufacturing milk, the excess price should not be subject to a location differential.

Handler's obligation for producer milk and producer-settlement fund. Because producers will receive payment at the rate of the marketwide uniform price(s) each month and because the payment

due from each handler at the applicable class prices may be more or less than he is required to pay directly to producers or cooperative associations, a producer-settlement fund should be established to equalize this difference.

The handler's total obligation to producers is determined by applying the class prices to producer milk at his pool plant(s) and adding the obligation, if any, of compensatory payments on other source milk and from the reclassification of beginning inventory (tentatively classified as Class II milk at the end of the preceding month) which is allocated to Class I milk for the month. The order should provide a method for the determination and reclassification of inventory from producer milk to result in a cost of such milk identical with the cost of current receipts of producer milk and a determination and reclassification cost of inventory from unpriced other source milk identical with the compensatory payments on current receipts of unpriced other source milk. The allocation of inventory to producer and other source milk in the attached order follows the same allocation procedure as is used to determine the classification of producer milk. No reclassification charge will result on inventory from milk which originates from a plant under another Federal order which is priced as Class I milk under such order.

Each handler whose obligation for producer milk is greater than the amount he is required to pay producers at the applicable uniform prices should pay the difference into the producer-settlement fund and each handler whose obligation for producer milk is less than the applicable uniform price value should receive payment of the difference from this fund. For administrative convenience, payments due any handler should be offset by payments due from such handler.

Experience has shown that it is necessary for efficient functioning of the producer-settlement fund to set aside a reasonable reserve in such fund at the end of each month to cover minor audit adjustments, delayed payments or other contingencies. The reserve, which would be operated as a revolving fund and adjusted each month, is established in the attached order at not less than four or more than five cents per hundredweight of producer milk in the pool for the month.

As indicated elsewhere in this decision, compensatory payments received by the market administrator from any handler would be deposited in the producer-settlement fund. Such deposits would be included in the uniform price computation and thereby distributed to all producers.

Payment to producers. Each handler should be required to pay each producer for milk received from such producer and for which payment is not made to a cooperative association at not less than the applicable uniform price(s) on or before the 16th day after the end of each month. Since it has been the practice in this area for handlers to pay producers semi-monthly, provision should be made for partial payments to producers on or before the last day of each month for milk delivered during the first 15 days of such month at not less than the Class II price for the preceding month rounded to the next lowest dollar or half-dollar without adjustment for butterfat content, hauling and other deductions.

Provision should be made for a cooperative association to receive payment for the producer milk which it causes to be delivered to a pool plant. The taking of title to milk of its members and the blending of the proceeds from the sale of such milk, as is provided by the Act, will tend to promote the orderly marketing of milk. Cooperative associations will be assisted in discharging their responsibility to their members and to the market. Such function can be accomplished more expediently if an association is collecting payments for the sale of its member's milk. Each handler, therefore, should be required, if requested in writing by a cooperative association which the market administrator determines is authorized to collect payment for its member milk and has furnished a written promise to reimburse the handler for any improper claims on the part of the cooperative, to pay such association an amount equal to the sum of the individual payments otherwise payable to such producers. Handlers should be required to make such payments to the cooperative association on or before the 25th day of the month for milk received during the first 15 days of the month and make the final settlement for milk received during the month on or before the 14th day of the following month.

Provision should be made for the handler, if authorized by the producer, to make bona fide deductions for goods or services furnished to, or for payments made on behalf of, the producer. At the time of final settlement for producer milk, the handler should be required to furnish to each producer a supporting statement showing the pounds and butterfat test of milk received from him, the rate(s) of payment for such milk and a description of any deductions claimed by the handler.

(e) *Other administrative provisions.* Certain other provisions are needed in the order to carry out the administrative steps necessary to accomplish the purposes of the proposed regulation.

(1) *Terms and definitions.* In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term implies the same meaning throughout the order.

(2) *Market administrator.* Provision is made for the appointment by the Secretary of a market administrator to administer the order and to describe the powers and duties essential to the proper functioning of his office.

(3) *Records and reports.* Provisions are included in the order which notify handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish the proper classification and pricing of producer milk and payments due producers for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. Dates must be established for the announcement of prices by the market administrator.

Minor modification of some of such dates previously recommended should be made to provide a more reasonable period of time for the announcement of prices, computation of the pool and better coordination in the dates for completion of certain payments.

Handlers should maintain and make available to the market administrator (a) all records and accounts of their operations, including financial records, and such facilities he may deem necessary to determine the accuracy of the information submitted by the handler, and (b) any other information upon which the classification of producer milk depends. The market administrator likewise must be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the order.

There may be instances in which a handler, wittingly or unwittingly, fails to report all receipts and/or sales of milk. In such cases, it is necessary for the market administrator to have access to the financial as well as other pertinent records as a means of discovering omissions or inaccuracies in accounting for milk under the order. Assuring proper accounting for milk is an important feature of an order; thus, it is essential that the market administrator have access to any and all records necessary for him to properly perform his duty and broad authority is granted, in this respect, under the Agricultural Marketing Agreement Act of 1937, as amended.

It is necessary that handlers retain records to prove the utilization of the milk received from producers and that proper payments were made therefor. Since the books of all handlers associated with the market cannot be audited immediately after the milk has been delivered to a plant, it is necessary that such records be kept for a reasonable period of time. The order should provide, however, for specific limitations of the time that handlers shall be required to retain their books and records and of the period of time in which obligations under the order should terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F.R. 444). That decision, covering the retention of records and limitations of claims, is equally applicable in this situation and is adopted as a part of this decision.

Without a provision for termination of obligations after a reasonable period of time has elapsed, handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which would endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an under-payment is claimed, or within two years after payment was

made if a refund is claimed, unless within such period of time the handler files a petition, pursuant to section 8c(15)(A) of the Act, claiming such money. Handlers need also the protection of provisions terminating their obligations to make payments. Since handlers cannot be forewarned always as to contingent liabilities, it is extremely difficult and burdensome for them to make adequate provision therefor by setting up reserves or by taking other precautionary measures. Except under certain extraordinary conditions, such as litigation, the obligation of any handler to pay money should terminate two years after the day of the month during which the market administrator received the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that, in general, a period of two years is a reasonable time within which a market administrator should complete his auditing and inspection work and render any billings for money due under the order. Provisions are necessary also, as contained in the order included herewith, to meet such contingencies as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

If a handler fails to make the required reports or payments, his name should be publicly announced at the discretion of the market administrator. Such announcement is provided for by the Act, and it is concluded that its adoption will facilitate enforcement of the terms of the order.

(4) *Marketing services.* A provision should be made in the order for performance of marketing services for producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers receiving the service. If a cooperative association is performing such services for its member producers, the market administrator will accept this in lieu of his own service.

Orderly marketing will be promoted through a marketing service program by assuring individual producers that payments received by them for their milk are in accordance with the pricing provisions of this order and accurately reflect the weights and tests of milk delivered. Complete verification requires that butterfat tests and weights of individual producers deliveries as reported by the handler are proved to be accurate.

Dissemination of current market information to all producers will promote efficiency in the production, utilization and marketing of milk and should be included in the order as an additional phase of the marketing service program.

A maximum deduction of 6 cents per hundredweight should enable the market administrator to perform the various marketing services for producers. This deduction will apply only to receipts of milk from producers for whom he renders marketing services. If experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

Any cooperative association of producers performing marketing services for its producer-members shall receive such deductions as the membership agreement authorizes in lieu of the six-cent maximum rate deducted from payments made to nonmember producers.

(5) *Expense of administration.* Each handler operating a pool plant should be required to pay the market administrator as his pro rata share of the cost of administering the order not more than four cents per hundredweight, or such lesser amount as the Secretary may prescribe, on (1) producer milk, and (2) other source milk which is classified as Class I, except other source milk subject to an expense of administration assessment under another Federal order. Handlers operating nonpool plants should be assessed, depending on the option chosen pursuant to § 1024.75, on quantities of other source milk disposed of as Class I milk in the marketing area on routes or on the total receipts of Grade A milk from dairy farmers at the plant (not subject to administrative expense under another order) and other source milk which would be classified as Class I if such plant were a pool plant.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that cost of administration shall be financed through assessments on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers, including nonpool handlers, will be achieved by applying the administrative assessment in the above-described manner.

In view of the distances involved between plants and the cost of administering orders in comparable markets, an assessment rate of 4 cents per hundredweight is necessary to meet the expenses of administration. Provisions should be made to enable the Secretary to reduce the rate of assessment below the 4-cent maximum rate without necessitating an amendment to the order. This should be done at such time that experience reveals that a lesser rate will provide adequate revenue to administer the order properly.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings, and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above.

To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing agreement regulating the handling of milk in the Ohio Valley marketing area", and "Order regulating the handling of milk in the Ohio Valley marketing area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Ohio Valley marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of August 1959 is hereby determined to be the representative period for the conduct of such referendum.

Andrew T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 22d day of October 1959.

CLARENCE L. MILLER,
Acting Secretary.

Order[1] Regulating the Handling of Milk in the Ohio Valley Marketing Area

AUTHORITY: §§ 1024.0 to 1024.95 issued under sec. 5, 49 Stat. 753, as amended, 7 U.S.C. 608c.

§ 1024.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Ohio Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk and its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight, or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to producer milk and other source milk allocated to Class I at a pool plant and with respect to milk at a fluid milk plant which is a nonpool plant in accordance with § 1024.75 (a) or (b).

Order relative to handling. It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Ohio Valley marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1024.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1024.2 Department.

"Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 1024.3 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 1024.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

§ 1024.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1024.6 Ohio Valley marketing area.

"Ohio Valley marketing area" hereinafter referred to as the "marketing area" means all territory geographically located within the perimeter boundaries of the counties of Perry, Spencer, Warrick, Vanderburgh, Posey, Gibson, Pike, Dubois, and Crawford, all within the State of Indiana and the counties of Henderson, Daviess, Hancock, Breckinridge, Grayson, Ohio, McLean, Webster, Union, Hopkins and Muhlenburg, all within the State of Kentucky, including all municipal corporations and institutions owned or operated by the Federal, State or local governments lying wholly or partially within such areas.

§ 1024.7 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, milk concentrates, milk drinks (plain or flavored), cream (including sterilized cream), or any mixture of milk, skim milk or cream (except storage cream, aerated cream products, ice cream, ice milk and milk shake mixes, eggnog, evaporated or condensed milk and ster-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

ilized products packaged in hermetically sealed metal containers).

§ 1024.8 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale or retail outlet(s) other than to a:

(a) Milk plant(s);

(b) Distribution point(s); or

(c) Food processing plant(s) for use other than for fluid consumption.

§ 1024.9 Fluid milk plant.

"Fluid milk plant" means the land, buildings, surroundings, facilities and equipment which are used in the receipt, preparation, or processing of milk which is approved by a duly constituted health authority for fluid disposition as Grade A milk, and:

(a) All or a portion of such milk is (1) disposed of during the month in the form of a fluid milk product(s) in the marketing area on a route(s), or (2) moved in the form of a fluid milk product(s) to a plant which disposes of milk as described in subparagraph (1) of this paragraph.

§ 1024.10 Pool plant.

"Pool plant" means a fluid milk plant meeting the conditions of paragraph (a) or (b) of this section, except a plant operated by a producer-handler:

(a) Any such plant from which the fluid milk products disposed of on a route(s) (either directly from the plant, through vendors or distributing points) are equal to not less than 50 percent of the Grade A milk (described in § 1024.12 (a)) received at such plant from dairy farmers and from other plants during the month, and 25 percent or more of such receipts is disposed of as fluid milk products in the marketing area on a route(s), or

(b) Any such plant which receives Grade A milk (described in § 1024.12(a)) from dairy farmers and from which fluid milk products equal to not less than 50 percent of such receipts during the month are moved to a plant(s) described in paragraph (a) of this section: *Provided,* That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such plant during the period of September through December, such plant shall, unless written application for nonpool plant status is received by the market administrator from the operator of such plant on or before January 9 of any year, be designated as a pool plant during the months of January through August of such year.

§ 1024.11 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, processing or bottling plant other than a pool plant.

§ 1024.12 Producer.

"Producer" means any person, except a producer-handler or a person with respect to milk produced by him which is fully subject to the pricing and payment provisions of another order issued pursuant to the act, who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is:

(a) Permitted by the health authority having jurisdiction in the marketing area to be labeled and disposed of as Grade A milk in the marketing area; and

(b) Received during the month at a pool plant (including milk diverted from a pool plant to a nonpool plant pursuant to the conditions set forth in § 1024.13).

§ 1024.13 Producer milk.

"Producer milk" means skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from producers;

(b) Diverted for the account of the operator of a pool plant to another pool plant or a nonpool plant; or

(c) Diverted for the account of a cooperative association to a nonpool plant: *Provided,* That this definition shall not include the milk of any person during any month in which such milk is diverted for the account of (1) the operator of a pool plant for more than one-half of the days of delivery during the month; or (2) a cooperative association for more than one-half of the days of delivery during the months of August through March: *And provided further,* That producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant at which the milk was last received immediately prior to diversion.

§ 1024.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month in the form of a fluid milk product, except (1) fluid milk products received from pool plants, (2) producer milk, and (3) inventory of fluid milk products at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are repackaged, reprocessed or converted to another product in the plant or for which other utilization or disposition is not established pursuant to § 1024.32.

§ 1024.15 Base milk.

"Base milk" means that producer milk received from a producer during any of the months of April through July which is not in excess of such producer's daily average base computed pursuant to § 1024.60 multiplied by the number of days in the month.

§ 1024.16 Excess milk.

"Excess milk" means that producer milk received from a producer during any of the months of April through July which is in excess of such producer's base milk.

§ 1024.17 Handler.

"Handler" means (a) any person who operates a fluid milk plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1024.13.

§ 1024.18 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk in the marketing area on a route and who receives no fluid milk products from other dairy farmers or nonpool plants: *Provided,* That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1024.19 Chicago butter price.

"Chicago butter price" means the arithmetical average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

§ 1024.20 Nonfat dry milk price.

"Nonfat dry milk price" means the arithmetical average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the Department.

MARKET ADMINISTRATOR

§ 1024.25 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1024.26 Powers.

The market administrator shall have the powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1024.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to

enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 1024.86, (1) the cost of his bond and of the bond of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1024.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for herein, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly disclose, at his discretion, to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 1024.30 and 1024.31 or (2) payments pursuant to §§ 1024.75, 1024.80, 1024.82, 1024.84, 1024.86 and 1024.87;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Prepare and make available for producers, consumers, and handlers such statistics and information as are necessary and essential to the proper functioning of this part and as do not reveal confidential information;

(i) Verify all reports and payments of each handler by audit or such other investigation, as may be necessary, of such handler's records and facilities and of the records and facilities of any other person upon whose utilization the classification of skim milk and butterfat depends.

(j) On or before the date specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following: (1) The 8th day of each month, the Class I price and butterfat differential for the month, the Class II price and butterfat differential for the preceding month; and (2) the 11th day of each month, the uniform price(s), and the producer butterfat differential for the preceding month; and

(k) On or before the 15th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association or by its members which was used in each class by each handler receiving any such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handlers were used in each class.

REPORTS, RECORDS AND FACILITIES

§ 1024.30 Reports of receipts and utilization.

(a) On or before the 6th day after the end of each month, or not later than the 8th day after the end of the month if the report required by this paragraph is delivered in person to the office of the market administrator, each cooperative association in its capacity as a handler and each handler with respect to each of his pool plants shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator the following:

(1) The total pounds of skim milk and butterfat contained in or represented by:

(i) Producer milk, including for the months of April through July the aggregate amount of base milk;

(ii) Fluid milk products received from other pool plants;

(iii) Other source milk; and

(iv) Inventories of fluid milk products at the beginning and end of the month.

(2) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement, if required by the market administrator, of the disposition of Class I milk outside the marketing area.

(b) Each handler operating a fluid milk plant pursuant to § 1024.9(a)(1) which is a nonpool plant shall report on or before the applicable date specified in paragraph (a) of this section his receipts of milk from dairy farmers and all other sources and the utilization of such receipts in accordance with § 1024.40 as prescribed by the market administrator.

§ 1024.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe;

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants and for each fluid milk plant subject to § 1024.75(b) his producer payroll which shall show: (i) The total pounds of milk received from each producer or dairy farmer, as the case may be, including for the months of April through July the total pounds of base and excess milk for each producer; (ii) the average butterfat content of such milk; (iii) the days for which milk was received from each producer during September through December if less than a full month; and (iv) the amount of such handler's payment to each dairy farmer, producer or cooperative association, as the case may be, together with the price paid per hundredweight and the amount and nature of any advance payments and deductions authorized by such person; and

(2) Such other information as the market administrator may determine to be necessary to administer this part.

§ 1024.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1024.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, if necessary in connection with a proceeding under section 8c 15(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1024.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported pursuant to § 1024.30 shall be classified each month pursuant to the provisions of §§ 1024.41 to 1024.45.

§ 1024.41 Classes of utilization.

Subject to the conditions set forth in §§ 1024.42 to 1024.45, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat (1) disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b)(2) of this section, and (2) not specifically accounted for as Class II milk, and

(b) Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product, (2) disposed of for livestock feed and skim milk (only) dumped, upon prior notice as prescribed by the market administrator, (3) in cream stored and frozen, (4) in inventory of fluid milk products on hand at the end of the month, (5) in shrinkage not to exceed one-half of one percent of the skim milk and butterfat, respectively, in producer milk physically received at the plant, plus one and one-half percent of such receipts and of the receipts of skim milk and butterfat in bulk fluid milk products from pool plants, less such products dis-

posed of by such plant in bulk to another plant, and (6) in shrinkage of other source milk.

§ 1024.42 Shrinkage.

In computing shrinkage for the purposes of § 1024.41(b) (5) and (6) the market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in the following manner:

(a) Compute total shrinkage at each pool plant by subtracting the skim milk and butterfat, respectively, classified as Class I milk pursuant to § 1024.41(a)(1) and as Class II milk pursuant to § 1024.41 (b) (1), (2), (3), and (4) (subject to the provisions of § 1024.43 to § 1024.45) from the receipts of the skim milk and butterfat, respectively, required to be reported pursuant to § 1024.30;

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, among the pounds of producer milk, physically received at such plant, other source milk received in the form of fluid milk products in bulk, and fluid milk products in bulk received from other pool plants in excess of transfers of such products in bulk to other plants.

§ 1024.43 Responsibility of handlers.

All skim milk and butterfat shall be classified as Class I milk, unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified as Class II milk.

§ 1024.44 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to another pool plant, unless: (1) utilization in another class is claimed by the operator of both plants in their reports submitted pursuant to § 1024.30; and

(2) The transferee plant has utilization in Class II milk of an equivalent amount of skim milk and butterfat, respectively, after making the assignments pursuant to § 1024.46(a) (1) to (4) and the corresponding steps of § 1024.46(b) and any remaining quantities shall be classified as Class I milk: *Provided,* That if the transferring plant has other source milk during the month, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest priced available class utilization to the producer milk at both plants;

(b) As Class I milk if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located less than 300 airline miles from either the Courthouse in Owensboro, Kentucky, or Evansville, Indiana, unless:

(1) The handler claims classification in Class II in his report submitted to the market administrator pursuant to § 1024.30;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for verification;

(3) An amount of skim milk and butterfat, respectively, of not less than that so claimed by the handler was used in products included in Class II milk;

(4) The classification reported by the handler results in an amount of skim milk and butterfat in Class I milk claimed by all handlers transferring or diverting milk to such nonpool plant of not less than the amount of assignable Class I milk remaining after the following computation:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract the skim milk and butterfat received at such plant directly from dairy farmers who are approved by a duly constituted health authority to supply Grade A milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided,* That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act;

(5) If the skim milk and butterfat, respectively, transferred by all handlers (including transfers from fluid milk plants subject to § 1024.75(b)) to such a nonpool plant and reported as Class I milk is less than the skim milk and butterfat assignable to Class I milk, pursuant to subparagraph (4) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the total of the lower price classification reported by each of such handlers;

(d) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located 300 airline miles or more from either the Courthouse in Owensboro, Kentucky, or Evansville, Indiana.

§ 1024.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors the monthly report submitted for the pool plant of each handler pursuant to § 1024.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such plant: *Provided,* That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by the handler, the hundredweight of skim milk used to produce and disposed of in such products shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water originally associated with such solids.

§ 1024.46 Allocation of skim milk and butterfat classified.

(a) The pounds of skim milk remaining in each class after making the following computations each month with respect to each pool plant of each handler, shall be the pounds of skim milk in such class allocated to the producer milk for such month.

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk classified as Class II pursuant to § 1024.41(b)(5);

(2) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk in fluid milk products received in consumer packages, not larger than a gallon, and so disposed of, if such skim milk is subject to the Class I pricing provisions of another order issued pursuant to the Act;

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk which is not subject to the Class I pricing provisions of an order issued pursuant to the Act: *Provided,* That if the pounds of skim milk to be substracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(4) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk received in the form of a fluid milk product in bulk and which was subject to the Class I pricing provisions of another order issued pursuant to the Act: *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(5) Subtract the pounds of skim milk in fluid milk products received from other pool plants from the pounds of skim milk remaining in the class to which assigned, pursuant to § 1024.44(a);

(6) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of fluid milk products at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(8) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in series beginning with Class II milk. Any amount so subtracted shall be known as "overage".

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class.

MINIMUM PRICES

§ 1024.50 Basic formula price.

The basic formula price shall be the higher of the prices as computed to the nearest one-tenth of a cent by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) Add an amount, computed by multiplying the butterfat differential computed pursuant to § 1024.52(b) by five, to the arithmetical average of the basic (or field) prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following places for which prices are reported to the market administrator or to the Department by the companies listed below:

Company and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price obtained by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 4.8; and

(2) From the nonfat dry milk price, subtract 5.5 cents and multiply the difference by 8.2.

§ 1024.51 Class prices.

Subject to the provisions of §§ 1024.52 and 1024.53 the minimum class prices for producer milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month plus:

(1) During the 18 months immediately following the effective date of this section, $1.15 for each of the months of April through July and $1.38 for each of the months of August through March; and

(2) Thereafter, $1.10 for each of the months of April through July and $1.33 for each of the months of August through March.

(b) *Class II milk.* The price for Class II milk shall be:

(1) For the months of September through February, the basic formula price for the month; and

(2) For the months of March through August, the arithmetical average of the basic (or field) prices paid or to be paid per hundredweight for milk of 4.0 percent butterfat content for manufacturing purposes and received from farmers during the month at the following places for which prices are reported to the market administrator or the Department by the companies listed below plus 20 cents:

Company and Location

Producers' Dairy Marketing Association, Orleans, Ind.
Kraft Cheese Co., Dale, Ind.
Swift and Co., Russellville, Ky.
Pet Milk Co., Bowling Green, Ky.
Pet Milk Co., Mayfield, Ky.

§ 1024.52 Butterfat differentials to handlers.

For each one-tenth of 1 percent that the weighted average butterfat test of producer milk which is classified in each class for each handler is more or less than 4.0 percent there shall be added to or subtracted from, as the case may be, the price for such class, a butterfat differential determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.122 for each of the months of April through July and 0.126 for each of the months of August through March.

(b) *Class II price.* Multiply the Chicago butter price for the month by .120.

§ 1024.53 Location differentials to handlers.

For producer milk which is received at a pool plant located 80 miles or more from the County Courthouse in Evansville, Ind., or Owensboro, Ky., whichever is nearer, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1024.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from County Courthouse (miles)	*Rate per hundredweight (cents)*
80 but less than 90	13.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II in the transferee plant after making the calculations prescribed in § 1024.46(a)(4), and the comparable steps in § 1024.46(b) for such plant, such assignment to transferrer-plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1024.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1024.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight on unpriced Class I milk shall be calculated as follows:

(a) For the months of April through July, subtract the Class II price, adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential and the Class I location differential at the location of the plant from which such milk is supplied.

(b) For the months of August through March, subtract the uniform price to producers from the Class I price adjusted by the Class I location differential at the location of the plant from which such milk is supplied.

DETERMINATION OF BASE

§ 1024.60 Daily average base.

Subject to the rules set forth in § 1024.61 the daily average base for each producer shall be calculated by dividing the total pounds of milk received from such producer at a pool plant(s) during the months of September through February immediately preceding, by the number of days from the first day for which milk is received from such producers during such months to the last day of December inclusive, but not less than 120 days: *Provided,* That in the case of a producer whose milk is received at a plant which becomes a pool plant during or after the end of the base-forming period, and which has records of milk receipts satisfactory to the market administrator for the determination of a base, the producer's base shall be that which would have been calculated for such producer (exclusive of transfers) for the entire base-forming period if such plant had been a pool plant during such period.

§ 1024.61 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases.

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base as calculated pursuant to § 1024.60 to each person for whose account producer milk was delivered during the months of September through February;

(b) If a producer ceases to deliver milk in his name between September 1 and the last day of February, but milk is delivered to a pool plant from the same dairy production facility in the name of another producer during the remainder of the base-forming period, the base earned by both producers shall be combined in the manner set forth in paragraph (c)(3) of this section if milk is delivered in the names of both producers during any of the immediately following months of April through July; and

(c) A base shall be transferred from a person holding such base to another person as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market adminis-

trator and signed by the base holder or his heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) An entire base or the proportionate share of a jointly held base may be transferred to another person if such person assumes the ownership or operation of the farm on which the base to be transferred was established; and

(3) If one or more bases are transferred to a producer already holding a base which was either earned by such producer or transferred to him, a new base shall be computed by adding together the total producer milk deliveries during the base-forming period of all persons in whose name such bases were earned and dividing the total by the number of days from the earliest date of delivery during the base-forming period by any of such persons to the last day of February, both inclusive, but not less than 120 days.

DETERMINATION OF UNIFORM PRICES

§ 1024.70 Net obligation of each handler.

The net obligation of each handler for producer milk received during the month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of any average deducted from each class pursuant to § 1024.46(a)(8) by the applicable class price(s);

(c) Add an amount computed by multiplying the hundredweight of other source milk subtracted from Class I milk pursuant to § 1024.46(a)(3) and the corresponding step in § 1024.46(b) by the rate of payment determined pursuant to § 1024.55 applicable to milk at the nearest plant(s) from which an equivalent amount of other source milk was received: *Provided,* That if the source of any such fluid milk product is not clearly established or if such skim milk and butterfat is in a form other than a fluid milk product, such product shall be considered to have been received from a source at the location of the pool plant where it is classified; and

(d) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the month by the pounds of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1024.46(a)(6) and the corresponding step of § 1024.46(b) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 1024.46(a)(6) and the corresponding step of § 1024.46(b) for the month, whichever is less; and

(2) If the pounds on which payment is applicable pursuant to subparagraph (1) of this paragraph are less than the pounds subtracted from Class I milk pursuant to § 1024.46(a)(6) for the month, add an additional amount computed by multiplying the rate of payment pursuant to § 1024.55 by such difference to the extent that the pounds of skim milk and butterfat in other source milk assigned to Class II milk pursuant to § 1024.46(a)(3) and the corresponding step of § 1024.46(b) for the preceding month exceeds the total pounds of skim milk and butterfat classified as Class II milk pursuant to § 1024.41(b) (1), (2), (3), and (6) (subject to the provisions of § 1024.44) for such preceding month.

§ 1024.71 Computation of aggregate value used to determine uniform price(s).

For each month, the market administrator shall compute an aggregate value from which to determine the uniform price(s) per hundredweight for producer milk of 4.0 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1024.70 for the pool plants of all handlers who made the reports prescribed in § 1024.30 and who made the payments pursuant to §§ 1024.80 and 1024.82 for the preceding month;

(b) Add the aggregate of the values of location adjustments on producer milk pursuant to § 1024.85(b) for such handlers;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) Subtract if the average butterfat content of producer milk included in these computations is greater than 4.0 percent, or add if such average butterfat content is less than 4.0 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 1024.85 and multiplying the resulting figure by the total hundredweight of such milk.

§ 1024.72 Computation of uniform price.

For each of the months of August through March, the market administrator shall compute the uniform price per hundredweight for producer milk of 4.0 percent butterfat content as follows:

(a) Divide the aggregate value computed pursuant to § 1024.71 by the total hundredweight of producer milk included in such computation; and

(b) Subtract not less than 4 cents nor more than 5 cents.

§ 1024.73 Computation of uniform prices for base milk and excess milk.

For each of the months of April through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, as follows:

(a) Compute the total value on a 4.0 percent butterfat basis of excess milk included in the computations pursuant to § 1024.71 by multiplying the hundredweight of such milk not in excess of the total pounds of Class II milk included in such computations by the price for Class II milk of 4.0 percent butterfat content, multiplying the hundredweight of such milk in excess of the total hundredweight of such Class II milk by the price for Class I milk of 4.0 percent butterfat content, and add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 4.0 percent butterfat content;

(c) Subtract the value of excess milk at the uniform price determined in paragraph (b) of this section from the aggregate value of milk computed pursuant to § 1024.71;

(d) Divide the amount obtained in paragraph (c) of this section by the total hundredweight of base milk included in the computations pursuant to § 1024.71; and

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat content.

§ 1024.74 Notification of handlers.

The market administrator shall:

(a) On or before the 11th day after the end of each month, notify each handler who operates a pool plant:

(1) The amount and value of his milk in each class pursuant to § 1024.70;

(2) The amount due the producer-settlement fund pursuant to § 1024.82; and

(3) The amount to be paid by such handler pursuant to § 1024.86.

(b) On or before the 20th day after the end of each month, notify each handler who operates a fluid milk plant, not a pool plant the amount due the producer-settlement fund and the amount due for administrative assessment pursuant to § 1024.75.

§ 1024.75 Obligation of handlers operating a fluid milk plant which is a nonpool plant.

On or before the 25th day after the end of each month, each handler, except a producer handler, operating a fluid milk plant pursuant to § 1024.9(a)(1) which is a nonpool plant, shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 1024.30 to pay the amounts computed pursuant to paragraph (b) of this section.

(a) An amount (1) for deposit in the producer-settlement fund, equal to the rate of payment on unpriced milk pursuant to § 1024.55 multiplied by the hundredweight of skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 1024.45) in the marketing area on routes during such month; and (2) for administrative assessment, equal to the rate specified in § 1024.86 applied to such Class I milk unless an administrative ex-

pense assessment is applied at such plant, pursuant to another order issued pursuant to the Act, as a fully regulated (pool) plant under such order; and

(b) An amount (1) for deposit into the producer-settlement fund, equal to any plus amount remaining after deducting from the obligation that would have been computed pursuant to § 1024.70 for such nonpool plant and any supply plant(s) (meeting the requirements equivalent to § 1024.10(b)) which serves as a source of milk for such nonpool plant, if such plant(s) were a pool plant(s), (i) the gross payments made on or before the 18th day after the end of the month for milk received at such plant(s) during the month from dairy farmers meeting the conditions in § 1024.12(a), and (ii) any obligations incurred in accordance with provisions similar to those contained in this subparagraph or paragraph (a)(1) of this section applicable to such plant as a partially regulated plant under another order issued pursuant to the Act: *Provided,* That in the application of § 1024.44 for the purpose of this subparagraph, transfers or diversions of milk from such milk plant(s) to a pool plant shall be classified as Class I and Class II milk in the same ratio as other source milk is allocated to each class in such pool plant pursuant to § 1024.46(a)(3) and the corresponding step of (b): *And provided further,* In the application of § 1024.46(a)(5) and the corresponding step of § 1024.46(b), receipts of fluid milk products at such fluid milk plant(s) from a pool plant(s) shall be allocated from the class in which such products are classified at the pool plant pursuant to § 1042.44 (c) or (d); and (2) for administrative assessment, equal to the amount which would have been computed pursuant to § 1024.86 if such fluid milk plant were a pool plant during the month: *Provided,* That such amount shall be reduced by any amounts paid as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas, pursuant to the terms of other orders issued under the Act: *And provided further,* That (i) if less Class I milk is disposed of from such plant on routes in the Ohio Valley marketing area than is disposed of on routes in another marketing area(s) as defined in an order(s) issued pursuant to the Act, and (ii) if an administrative expense assessment is applied at such plant as if a fully regulated (pool) plant under the order for the marketing area where the volume of Class I milk disposed of from such plant is greatest, no administrative expense assessment shall be applicable under this order.

§ 1024.76 Plants subject to other Federal orders.

The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1024.10 and a greater total volume of fluid milk products is disposed of from such plant to pool plants and in the Ohio Valley marketing area on routes than in the marketing area regulated pursuant to such other order during the month and each of the three months, immediately preceding: *Provided,* That the operator of a plant which is exempt from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

Payments

§ 1024.80 Time and method of payments for producer milk.

(a) Except as provided in paragraph (c) of this section, each handler shall pay on or before the last day of each month each producer for producer milk received from him during the first 15 days of such month at not less than the Class II price for the preceding month rounded to the next lower dollar or half dollar as the case may be and without adjustment for butterfat content, hauling or other deductions;

(b) Except as provided in paragraph (c) of this section, each handler shall (1) on or before the 16th day after the end of the month pay each producer for milk received from him during the month not less than the applicable uniform price(s) for such month computed pursuant to §§ 1024.72 and 1024.73, adjusted by the butterfat differential computed pursuant to § 1024.85(a), the location differential pursuant to § 1024.85(b) and less the amount of the payment made pursuant to paragraph (a) of this section and bona fide deductions authorized by the producer: *Provided,* That, with respect to each deduction made from such payment, the burden shall rest upon the handler making the deduction, to prove that each deduction is authorized by, and properly chargeable to, the producer; (2) furnish each producer with a supporting statement in such form that it may be retained by the producer which shall show:

(i) The month and identity of the handler and of the producer;

(ii) The total pounds and the average butterfat content of milk delivered by the producer, including for the months of April through July, the pounds of base milk and excess milk;

(iii) The nature and amount or the rate per hundredweight of each deduction claimed by the handler including any deduction made pursuant to § 1024.87;

(iv) The minimum rate or rates at which payment is required;

(v) The rate which is used in making the payment if such rate is more than the applicable minimum; and

(vi) The net amount of payment to the producer.

(c) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(1) Pay to the cooperative association on or before the 25th and 14th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, an amount not less than the total due such producer-members as determined pursuant to paragraphs (a) and (b), respectively, of this section.

(2) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member-producer the total pounds of milk received during the first 15 days of the month;

(3) Submit to the cooperative association in writing on or before the 10th day of each month the information for each member-producer required pursuant to subdivisions (i) to (iii) of subparagraph (b)(2) of this section.

(d) The payments and submission of information pursuant to paragraph (c) of this section shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(e) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto.

(f) Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1024.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1024.75, 1024.82 and 1024.84 and from which he shall make all payments pursuant to §§ 1024.83 and 1024.84: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 1024.82 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month each handler shall pay to the market administrator any amount by which the total value of milk at his pool plant(s) computed pursuant to § 1024.70 for such month is greater than the value of producer milk received by such handler during the month, computed at the applicable minimum uniform prices as specified in §§ 1024.72 and 1024.73 adjusted for the differentials provided for in § 1024.85.

§ 1024.83 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler, any amount by which the total value of milk at his pool plant(s) computed pursuant to § 1024.70 for such handler for such month is less than the value of producer milk received by such handler during the month, computed at the applicable uniform prices as specified in §§ 1024.72 and 1024.73 adjusted for the differentials provided for in § 1024.85.

§ 1024.84 Adjustment of errors in payment.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to §§ 1024.75 and 1024.82, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall within 15 days make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1024.83, the market administrator shall within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1024.80, the handler shall pay such balance, due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosures.

§ 1024.85 Butterfat and location differentials to producers.

(a) *Butterfat differential.* In making payment for producer milk pursuant to § 1024.80, there shall be added to or subtracted from, respectively, the uniform price(s) per hundredweight for each one-tenth of one percent of butterfat content in such milk above or below 4.0 percent, respectively, a butterfat differential computed by the market administrator by multiplying the total pounds of butterfat in producer milk classified in Class I and Class II milk during the month pursuant to § 1024.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

(b) *Location differentials.* In making payments to producers pursuant to §1024.80 for milk received at a pool plant located 80 miles or more from the nearest of the courthouse in Evansville, Indiana, or the courthouse in Owensboro, Kentucky, by the shortest hard-surfaced highway distance, as determined by the market administrator, the uniform price for August through March and the uniform price for base milk for April through July shall be reduced at the same rate as is applicable to Class I milk at such plant pursuant to § 1024.53.

§ 1024.86 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market administrator on or before the 12th day after the end of each month, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to receipts at his pool plant(s) during the month of producer milk and other source milk allocated to Class I milk pursuant to § 1024.46(a)(3) and the corresponding step of § 1024.46(b). A handler operating a fluid milk plant which is a nonpool plant shall pay administrative assessments in accordance with § 1024.75.

§ 1024.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1024.80(b), shall deduct 6 cents per hundreweight or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 12th day after the end of the month. Such money shall be used by the market administrator to verify weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 14th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1024.88 Termination of obligations.

The provisions of this section shall apply to any obligation under this order for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representatives all books and records required by this order to be made available, the market administrator may within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 1024.90 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to §1024.91.

§ 1024.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1024.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 1024.93 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 1024.94 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1024.95 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

[F.R. Doc. 59-9070; Filed, Oct. 26, 1959; 8:49 a.m.]